



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: BOSTON

Date: AUG 16 2007

MSC 05 348 12724

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel contends that the denial of the application is “unlawful, arbitrary and capricious in that the USCIS Officer deliberately ignored clear unambiguous evidence supporting the applicant’s case. Counsel asserts that the CIS officer “was biased and conducted the interview in a manner clearly designed to deprive the applicant of a fair hearing.”

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. See 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he resided at “27 Racassep Avenue, Worcester, Massachusetts” from 1981 to 1988.

At his interview with a CIS officer on March 27, 2006, the applicant was placed under oath in the presence of his attorney. When the applicant was asked when he first entered the United States, the applicant responded that he was admitted to the United States at Baltimore, Maryland, in June 1982 as a nonimmigrant B-2 visitor to attend a church seminar. The applicant's statement under oath that he first entered the United States in June 1982 contradicts his statement on the Form I-687 that he lived in Worcester, Massachusetts” from 1981 to 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a statement from [REDACTED] a resident of Worcester,

Massachusetts. [REDACTED] who indicated that he lived in Baltimore, Maryland, from 1950 to 1983, explained that that the applicant worked as a parking lot clerk at a parking lot next to the building where he worked at that time. [REDACTED] stated that he asked the applicant where he was from, and the applicant told him he was from Africa. [REDACTED] further stated that he and the applicant have been good friends for many years and enjoy sharing activities such as going to church, going for bike rides, and walking in the park in the spring. Although [REDACTED] stated that he first met the applicant in August 1982, he did not provide any relevant and specific verifiable information such as the applicant's address in the United States during the requisite period.

The applicant also submitted a statement from [REDACTED] a resident of Lynn, Massachusetts. [REDACTED] stated that she first met the applicant in 1985 in Lynn, Massachusetts, through work. [REDACTED] stated that her relationship with the applicant began as a business relationship and grew into a personal relationship. However, [REDACTED] did not any information as to how the frequency of her contact with the applicant. Nor did she provide any specific and verifiable information such as the applicant's address in the United States during the requisite period.

The applicant included a notification of class instruction addressed to the Clerk of The Mother Church, The First Church of Christ, Scientist, Christian Science Center, Boston, Massachusetts. This document indicates that the applicant attended a class in June 1982. The applicant's address on this document is listed as [REDACTED].

The applicant also included a letter addressed "To Whom It May Concern" from the Group of Christian Scientists, [REDACTED]. The letter states:

This letter is to confirm that [REDACTED] has been a keen member of this church and main contributor with financial matters and material things like bibles him [sic] magazines and stationeries essentials.

Due to his hard work and leadership skills this group church choose him to attend a two weeks seminar hosted by the Christian Science church of Baltimore Maryland. Therefore the group church prepared him with all the necessities that were required and in June of 1982 [REDACTED] for United States of America.

The applicant stated under oath during his interview that he first came to the United States in June 1982. These two church documents both indicate that the applicant first came to the United States in June 1982, not in 1981 as he claimed on the Form I-687. The applicant has not provided any explanation for this contradiction in his claimed date of entry into the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On November 17, 2005, the district director issued a notice informing the applicant of his intention to deny the application because the applicant had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States from prior to January 1, 1982, through the date he attempted to file a Form I-687 with the Service during the period ending on May 4, 1988. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim.

The applicant, in response, submitted photocopies of his Kenyan passports reflecting admissions into the United States in 2002 and 2003. He did not, however, submit any additional evidence to corroborate his claim of continuous residence in the United States during the requisite period.

On June 27, 2006, the district director denied the application because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982, through the date he attempted to file a Form I-687 with the Service during the period ending on May 4, 1988. The district director specifically noted in the denial decision that the applicant stated under oath during his interview that he first entered the United States in June 1982. The district director stated that, since the applicant, by his own testimony, did not enter the United States until June 1982, he cannot establish continuous residence in the United States **from prior to January 1, 1982** through the date he attempted to file a Form I-687 with the Service.

On appeal, counsel contends that the denial of the application was arbitrary and capricious because the CIS officer who conducted the interview "deliberately ignored clear unambiguous evidence supporting the applicant's case." Counsel asserted that the CIS officer "was biased and conducted the interview in a manner clearly designed to deprive the applicant of a fair hearing."

Without a transcript of the applicant's legalization interview, it is not possible to confirm or rebut counsel's assertions. Nevertheless, the fact remains that the applicant, by his own testimony, was not continuously present in the United States throughout the requisite period. The applicant is, therefore, ineligible for temporary resident status.

Since the applicant has stated under oath that he first entered the United States in June 1982, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.