



U.S. Citizenship
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FILE:



MSC-05-131-19167

Office: NEW YORK

Date:

AUG 29 2007

IN RE:

Applicant:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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, New York, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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) during the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director found that affidavits submitted by the applicant were not credible. The director also found evidence in the record that indicated the applicant had not represented all of his absences on his Form I-687. Therefore, the 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, the applicant provides additional affidavits to establish that he maintained continuous residence in the United States during the statutory period.

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 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 applicant 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 applicant 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 and its credibility and amenability to verification. 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 his 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 continuously 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 Citizenship and Immigration Services (CIS) on February 8, 2005. Part #16 of the Form I-687 application asks the applicant when he last entered the United States. Here, he showed that his last entry into the United States occurred on August 18, 2001. At part #30 asks applicants to list all residences in the United States since their first entry. Here, the applicant showed his address during the requisite period to be [REDACTED] from May 1981 to June 1989. At part #32, the applicant was asked to list all of his absences from the United States since January 1, 1982. Here, he showed two absences as follows: a trip to Senegal to visit relatives from January to February 1987; and a trip to visit relatives in Senegal from December 2000 to May 2001. It is noted that this information conflicts with the response the applicant gave on part #16 of this same application, where he shows his last entry into the United States was in August 2001. At part #33, the applicant was asked to list all employment since January 1, 1982. Here, he showed that he had not ever been employed in the United States. As such, the applicant did not specify any work locations for this time period. Part #37 (b) of Form I-687 asks applicants to indicate whether they have ever been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance excluding traffic violations. Here, the applicant indicated that he had not.

In the record is a Criminal Court record that indicates the applicant was convicted of being in violation of New York Penal Law § 240.20, disorderly conduct. Under New York Penal Law § 240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: he engages in fighting or in violent, tumultuous or threatening behavior; he makes unreasonable noise; in a public place, he uses abusive or obscene language, or makes an obscene gesture; without lawful authority, he disturbs any lawful assembly or meeting of persons; he obstructs vehicular or pedestrian traffic; he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; he creates a hazardous or physically offensive condition by any act which serves no legitimate purpose. Disorderly conduct is a violation.

Here, it is indicated that the applicant was sentenced to a one year conditional discharge and was made to perform community service work for one day. Also in the record is a certificate of completion of alternative sentence compliance for the applicant. This document is dated March 9, 2005. It is noted that this single conviction for a violation does not render the applicant ineligible pursuant to 8 C.F.R. § 254a.11(d)(1) and 8 C.F.R. § 254a.18(a).

The record indicates that the applicant signed his Form I-687 on January 28, 2005. It is not clear from the record when the applicant was convicted of disorderly conduct. Therefore, it cannot be determined whether he responded inaccurately to question #37 (b) on his Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; School records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided: a photocopy of his national identity card from Senegal; photocopies of some pages of his Senegalese passport; statements and affidavits; and three photographs.

Details of those documents are as follows:

- A national identity card issued to the applicant in [REDACTED] on January 4, 1999. This document shows the applicant's address as [REDACTED] indicating that the applicant lived in [REDACTED] when he was issued the card. This address conflicts with what the applicant showed as his address from June 1998 to November 2001 on his Form I-

687 where he indicated he lived at [REDACTED] Union City, New Jersey. The presence of this document in the file indicates the applicant was in [REDACTED] in January of 1999. This conflicts with the applicant's responses to part #32 of his Form I-687 where he did not show an absence during the year 1999. Therefore, the presence of this document in the record casts doubt on whether the applicant fully represented all of his absences on his Form I-687.

- A photocopy of a page of Senegalese passport [REDACTED] showing the passport was issued to the applicant on April 11, 2005.
- A photocopy of pages two (2) and three (3) of a passport showing the applicant's last name and a photograph of the applicant. Page two (2) of this passport is a partial photocopy. The number at the bottom of this passport is [REDACTED]
- A photocopy of pages four (4) and five (5) of a passport. The number at the bottom of this passport is [REDACTED] indicating that it corresponds to the photocopies of pages two (2) and three (3) of the passport that is issued to the applicant. These pages indicate that the passport expires on November 23, 2002 and that it was issued in [REDACTED] on November 24, 1998. The presence on this stamp in the applicant's passport indicates the applicant was in [REDACTED] in November of 1998. This conflicts with the applicant's responses to part #32 of his Form I-687 where he did not show an absence during the year 1998. Therefore, the presence of this stamp in the applicant's passport casts doubt on whether the applicant fully represented all of his absences on his Form I-687.
- A photocopy of two pages of passport [REDACTED]. The first page of this passport shows an I-94 arrival card [REDACTED] 08 with the applicant's name written on it. This I-94 card shows a date stamp that indicates an arrival into the United States on August 18, 2001. Though this stamp would appear to indicate that the applicant was outside of the United States until August 18, 2001, service records indicate that the actual arrival date associated with this I-94 card is May 19, 2001
- A photocopy of pages of pages eight (8) and nine (9) of a passport issued to the applicant. Page eight indicates the applicant left the airport in [REDACTED] on May 19, 2001. The adjacent page indicates that the applicant who had passport [REDACTED] was issued a United States B1/B2 visa on February 23, 2001.
- A statement from [REDACTED] that was notarized on September 21, 2005. This statement provides [REDACTED]'s address and phone number at the time the letter was submitted. [REDACTED] states he has known the applicant since 1985 and that the applicant was turned away when tried to file for legalization during the initial filing period. This affidavit does not provide information regarding how [REDACTED] met the applicant, nor does it establish that [REDACTED] was in the United States during the requisite period. No identity documents for [REDACTED] were included with this statement. Because no documentation

establishing that [REDACTED] was physically present in the United States during the requisite period was included with this affidavit, it carries minimal weight.

- An affidavit from [REDACTED] that is dated September 10, 2005 and was notarized on September 19, 2005. This affidavit shows that [REDACTED] has known the applicant since 1983 and that the applicant has been residing in the United States since that time. Though the affiant claims to have been present in the United States since 1983, he did not provide documentation that establishes his presence since that time. Though a phone number was provided at which the affiant indicates the Service can call him, no identity documents from the affiant were submitted with this affidavit. Because no documentation establishing that [REDACTED] was physically present in the United States during the requisite period was included with this affidavit, it carries minimal weight.
- An affidavit from [REDACTED] that is dated September 15, 2005 and was notarized on September 19, 2004. This affidavit shows that [REDACTED] has known the applicant since 1981 and further provides that the applicant has been living in the United States since then. The affiant does not provide documentation that establishes that he was present in the United States during the requisite period. Though a phone number was provided at which the affiant indicates the Service can call him, no identity documents from the affiant were submitted with this affidavit. Because no documentation establishing that [REDACTED] was physically present in the United States during the requisite period was included with this affidavit, it carries minimal weight.
- Three photographs that are labeled as follows:
 - A photograph of the applicant with another individual in front of a store called, "Cosmetics Plus." The back of this photograph indicates that it is the applicant and [REDACTED] in the street. No date is provided for this photograph. While the back of this photograph does indicate that it pictures the applicant and [REDACTED] because no identity documents have been provided that show what [REDACTED] looks like, this photograph is not amenable to verification. Further, there is nothing that establishes when this photograph was taken. Therefore, it does not establish a relationship between the applicant and the affiant nor does it establish that the affiant was in the United States during the requisite period. Therefore, minimal weight can be given to this evidence.
 - A photograph of three men in a house. The back of this photograph says, "Home." It is not clear who is pictured in this photograph. There is nothing that establishes that this photograph was taken in the United States or when this photograph was taken. Therefore, it does not establish a relationship between the applicant and any of the affiants or that those submitting affidavits were in the United States during the requisite period. Therefore, minimal weight can be given to this evidence.

- A photograph of four individuals, one of whom appears to be the applicant, in a house. Nothing is written on the back of this photograph. It is unclear when this photograph was taken or who is featured in the photograph. Therefore, it does not establish a relationship between the applicant and any of the affiants. It also does not establish that the applicant or any of the affiants were in the United States during the requisite period. Therefore, minimal weight can be given to this evidence.

The letter from [REDACTED] dated May 22, 2005 provides that she has known knows the applicant, but she does not indicate that she knew him during the requisite period. Similarly, the applicant submits an earnings statement from 2005. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because both of these documents do not verify the applicant's presence in the United States during the requisite time period, they are not relevant evidence for this proceeding. It is noted that though the applicant indicated on his Form I-687 that he has never been employed in the United States, the presence of the earnings statement does not conflict with this information, as the applicant signed his Form I-687 in January of 2005 and the earnings statement indicates that it is for the week of May 22 to May 28, 2005.

A Notice of Intent to Deny was issued to the applicant on September 3, 2005. In this NOID, the director indicated that the applicant had not established his continuous residence during the requisite period. Specifically, the director stated that the applicant failed to provide evidence of his entry through JFK airport with a photo substituted passport in 1981. The director noted that only one affidavit was submitted in support of the applicant's claim of having maintained continuous residence in the United States during the requisite period. The director found that this affidavit, from [REDACTED] was not credible or amenable to verification. The director found that there was no proof that the affiant had direct personal knowledge of the events and circumstances of the applicant's residency. The director went on to specify that credible affidavits include identity documents from the affiant, proof that the affiant was in the United States during the statutory period, and proof that there was a relationship between the affiant and the applicant during the requisite period, such as photos taken during that time. As a response to the NOID, the applicant also submitted the previously noted affidavits and statements.

In denying the application the director noted that the applicant provided these additional documents, however, she found that they did not establish, by a preponderance of the evidence, that the applicant had maintained continuous residence in the United States. Specifically, she stated the affidavits from [REDACTED] and the updated, notarized affidavit from [REDACTED] did not contain identity documents from the affiants, or proof that the affiants were in the United States during the requisite period. Though was not clear that the letter from [REDACTED] related to the requisite period, the director noted the same regarding the letter from [REDACTED]. The director also noted that the applicant's passport contained a stamp that indicated that passport was issued in [REDACTED] on November 24, 1998 and noted that the applicant's Form I-687 did not show that he was absent from the United States at that time. Therefore, the director found that the applicant had not established, by a preponderance of the evidence, that he had maintained continuous residence in the United States during the requisite period and denied the application.

On appeal the applicant re-submits his previously submitted affidavits and also submits additional affidavits.

The applicant submits an additional affidavit from [REDACTED] notarized on March 3, 2006 that states that he has known the applicant since 1985. The affiant goes on to say that he is friends with the applicant and has gone to many places in New York with the applicant. No identity documents for the affiant were submitted with this affidavit. Similarly, no documents that establish that the affiant was present in the United States during the requisite period were submitted.

The applicant submits an additional affidavit from [REDACTED] dated and notarized on March 4, 2006. In this affidavit, [REDACTED] reiterates that he has known the applicant since 1983. No identity documents for the affiant were submitted with this affidavit. Similarly, no documents that establish that the affiant was present in the United States during the requisite period were submitted.

The applicant submits an additional affidavit from [REDACTED] that is dated March 2, 2006 and notarized on March 4, 2006. In this affidavit, [REDACTED] reiterates that he has known the applicant since 1981. The affiant states that he met the applicant at Hotel Brian. However, no evidence that the affiant lived at this hotel during the requisite period has been submitted. No identity documents for the affiant were submitted with this affidavit. Similarly, no documents that establish that the affiant was present in the United States during the requisite period were submitted.

The applicant submits a new letter from [REDACTED] stating that the applicant has a man of good character who works hard. [REDACTED] confirms that she has known the applicant since 2005. This letter does not establish the applicant's continuous residence in the United States during the requisite period and is therefore not found relevant.

Though the applicant did submit additional affidavits with his appeal, he did not establish that any of the affiants were in the United States during the requisite period. Therefore, he has not presented evidence that establishes that the affiants could have had personal knowledge that he maintained continuous residence in the United States during the requisite period. Because of this, these newly submitted affidavits carry minimal weight and are not found to establish by a preponderance of the evidence that the applicant maintained continuous residence in the United States during the requisite period.

Casting doubt on the applicant's having maintained continuous residence in the United States during the requisite period is evidence in the record that indicates that he did not fully disclose all of his absences from the United States.

The applicant's passport indicates that he was issued his Senegalese passport in Senegal in November of 1998. Because this indicates the applicant was absent from the United States on a date that does not correspond with one he has indicated as falling within a period of absence on his Form I-687, doubt is cast on whether the applicant fully represented all of his absences from the United States since January 1, 1982 both during and after the requisite period.

Further, the applicant's national identity card from Senegal indicates that he was absent from the United States on January 4, 1999. However, the applicant did not indicate on his Form I-687 that he was absent from the United States during 1999. Further, this document shows the applicant's address at the time this card was issued was [REDACTED] an address in [REDACTED]. This address conflicts with what the applicant showed as his address from June 1998 to November 2001 on his Form I-687, which states the applicant lived at [REDACTED] New Jersey. Therefore, the presence of this document in the record also casts doubt on whether the applicant fully represented all of his absences on his Form I-687 both during and after the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has not submitted any evidence with his appeal that addresses these inconsistencies.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail. No affidavits submitted establish that the affiants were present in the United States during the requisite period. No affidavits provide a United States address at which the affiants have personal knowledge that the applicant lived at in the United States during the requisite period. Further, documents in the record cast doubt on whether the applicant fully represented all of his absences on his Form I-687.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory statements contained in the applicant's I-687 application and supporting affidavits, and the applicant's reliance upon documents with minimal probative value, 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.