



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-201-14594

Office: NEW YORK

Date: AUG 30 2007

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: 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.

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of Section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. Specifically, the director questioned the credibility of an affidavit submitted by the applicant. As a result, the director denied the application.

On appeal, the applicant affirmed the credibility of the affidavit he submitted, and resubmitted a copy of the affiant's United States citizenship documentation.

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 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 Immigration and Naturalization Service (INS) 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 April 15, 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 listed the following addresses in the Bronx, New York during the requisite period: [REDACTED] from 1981 to 1985; and [REDACTED] from 1986 to 1995. At part #32 where applicants were asked to list absences from the United States since entry, the only absence the applicant listed during the requisite period was a trip to Ghana from August 1986 to November 1986. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit to Ghana spanned the complete months of September and October, it must have exceeded 45 days. The applicant provided no explanation for the delay in his returning to the United States. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant only listed his work as a self-employed street vendor, which occurred after the requisite period. The applicant initially submitted no supporting documentation with his Form I-687 application.

The record indicates the applicant was interviewed by an immigration officer on January 11, 2006. During the interview, the applicant stated that he departed the United States sometime in 1983 and returned in December 1983. This statement is found to be inconsistent with the applicant's statements on Form I-687, where the only departure he mentioned that occurred during the requisite period was in 1986. The applicant also stated that he worked in the United States "selling on the street" in 1983 or 1984. This statement is inconsistent with the applicant's statements on Form I-687, where he indicated he did not begin working in the United States until after the requisite period. These inconsistencies further call into question whether the applicant actually resided in the United States throughout the requisite period. During the interview, the applicant also stated that he entered the United States during winter 1981.

At the interview, the applicant submitted an affidavit from [REDACTED]. In this affidavit, [REDACTED] confirmed the applicant's residences during the requisite period. However, [REDACTED] failed to explain how he became acquainted with the applicant or to provide any information regarding the nature of their relationship. As a result, this affidavit is found to be lacking in detail.

In response to a Notice of Intent to Deny (NOID) issued on January 25, 2006, the applicant submitted an additional affidavit from [REDACTED] together with contact information and United States citizenship documentation for the affiant. In the affidavit, [REDACTED] confirmed the applicant's residences in the Bronx, New York during the requisite period as follows: [REDACTED] from June 1981 to December 1985, and [REDACTED] from January 1986 to December 1995. These statements conflict with the applicant's statements during his interview with an immigration officer. Specifically, the applicant indicated he entered the United States in the winter of 1981, while the affiant confirms the applicant began residing in the United States in June 1981. This inconsistency further calls into question whether the applicant actually resided in the United States throughout the requisite period.

In denying the application the director questioned the credibility of the affidavit from Mr. [REDACTED] because the affidavit lacked proof that the affiant had direct personal knowledge of the events and circumstances of the applicant's residency. The director listed qualities possessed by credible affidavits, including proof the affiant was in the United States during the statutory period, proof there was a relationship between the applicant and the affiant, documentation identifying the affiant, and a current phone number at which the affiant may be contacted for verification. The director determined the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of Section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. As a result, she denied the application.

On appeal, the applicant affirmed the credibility of [REDACTED] affidavit. The applicant explained that he had already provided [REDACTED] contact information and current occupation, together with a copy of [REDACTED] citizenship documentation.

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

or conflict with the applicant's statements. Specifically, [REDACTED] affidavit lacked sufficient detail, and [REDACTED] affidavit conflicted with the applicant's statements on Form I-687. In addition, the applicant's statements on Form I-687 indicate he was absent from the United States for a visit exceeding 45 days in length during the requisite period. Lastly, the applicant's statements on Form I-687 conflict with his statements during the interview with the immigration officer.

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, the record of his interview with an immigration officer, and his supporting affidavits; the applicant's reliance upon documents with minimal probative value; and the applicant's admission that he departed the United States for a visit exceeding 45 days, 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.