



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 05 028 10195

Office: NEW YORK Date: DEC 14 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:

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on October 28, 2004. The district director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The district director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant reiterates his claim that he first entered the United States in 1981 and stayed in this country until 1984, at which time he was deported to his home country, Senegal. He further claims that he returned to the United States within 45 days of his removal.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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. 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 October 28, 2004. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at “ [REDACTED] New York, New York” from November 1981 to April 1990. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that he was in Canada on business from April to May 1987. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he was self-employed as a street vendor at [REDACTED] from December 1981 to February 1990.

On August 23, 2005, the district director issued a notice informing the applicant of her intent to deny his application unless he provided additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence.

The applicant, in response, submitted a photocopy of a post card from the [REDACTED] located at [REDACTED] New York, New York.” The applicant’s name and [REDACTED]

are hand written on the lefthand side of the postcard and the year " [REDACTED] " is handwritten on the upper righthand portion of the post card. This postcard is not sufficient to corroborate the applicant's claim that he lived briefly in the [REDACTED] n Hotel in 1984. The post card is not postmarked, and the applicant's name, "[REDACTED]" and [REDACTED] could have been written on the post card by anyone at any time.

The applicant also submitted an affidavit dated May 16, 2005, from [REDACTED] a resident of New York, New York. The affiant stated that he and the applicant used to live together at [REDACTED] New York" in 1986. He further stated that he and the applicant had been friends since that time. Mr. [REDACTED] provided no information as to how he met the applicant. Furthermore, the applicant did not list this address on the Form I-687. He indicated that he resided at "[REDACTED] New York, New York" from November 1981 to April 1990. The applicant has not provided any explanation for this discrepancy in his claimed addresses in the United States during the requisite period.

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).

The applicant provided a photocopy of a consular cash receipt from the United States Consulate in Dakar, Senegal, acknowledging receipt of a fee for issuance of a nonimmigrant B-1 visa on January 13, 1984. This document establishes that the applicant was in Senegal as of January 13, 1984. It does not establish entry into the United States prior to that date or residence in the United States from prior to January 1, 1982 to January 13, 1984.

The applicant included a personal statement in which he claimed that he entered the United States from Canada in a truck sometime in 1981, though he couldn't remember the exact month. He stated that the person who filled out his application for him "forgot" to list his deportation to Senegal in May 1984. He stated that he resided briefly in the [REDACTED] Hotel, located at [REDACTED] Street, New York, New York" briefly in 1984.

The record contains a photocopy of the applicant's Senegalese passport Number [REDACTED] issued in Dakar, Senegal, on August 22, 1978, with an expiration date of August 21, 1981. The passport was subsequently renewed in Dakar, Senegal, on April 9, 1983, and was valid until April 8, 1986. The passport contains a United States nonimmigrant B-1 visitor's visa Number [REDACTED] issued in Dakar, Senegal, on January 13, 1984, valid for multiple applications for admission into the United States until April 13, 1984. The passport page with the United States B-1 visa bears a United States immigration stamp indicating that the applicant was admitted to the United States at New York, New York, on February 4, 1984.

The record also contains a Form I-213, Report of Deportable Alien, indicating that the applicant was admitted to the United States at New York, New York, on February 4, 1984, as a nonimmigrant B-1

visitor and was authorized to remain in the United States until February 29, 1984. The report further indicates that the applicant was encountered setting up a sidewalk vendor stand in New Orleans, Louisiana, on May 22, 1984, with a group of other Senegalese individuals. He was taken into custody by the United States Border Patrol and was deported to Senegal from New York, New York, via Air Afrique Flight [REDACTED] on May 26, 1984.

The applicant did not claim to have worked in New Orleans, Louisiana, as a street vendor on his application. He indicated that he worked in New York, as a street vendor during the requisite period.

On appeal the applicant reiterates his claim that he entered the United States in 1981 and stayed in this country until 1984, at which time he was deported to Senegal. He claims that he was outside the United States for less than 45 days after his deportation to Senegal and returned to the United States with a nonimmigrant visa. He asserted that he had obtained a vendor license in New Orleans in 1984, but he no longer has it in his possession. The applicant submits another copy of the affidavit from [REDACTED] previously submitted in response to the Notice of Intent to Deny dated August 23, 2005.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted only one affidavit that lacks sufficient verifiable information to corroborate his claim and contains a statement that contradicts the applicant's claimed addresses in the United States on the Form I-687 application.

The record contains documents showing that the applicant's Senegalese passport number [REDACTED] was issued in Senegal in August 1978, and was subsequently renewed in Senegal in April 1983. The applicant was issued a nonimmigrant B-1 visitor's visa in Dakar, Senegal, on January 13, 1984, and he was admitted to the United States on February 4, 1984, as a nonimmigrant B-1 visitor. These facts strongly suggest that the applicant entered the United States for the first time on February 4, 1984. The applicant has not submitted any credible evidence to corroborate his claim of entry into the United States in 1981 and residence in the United States from 1981 until his admission to the United States as a nonimmigrant B-1 visitor on February 4, 1984.

The absence of sufficiently detailed 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 applicant's contradictory statements on his application and his 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.