



U.S. Citizenship
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Services

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FILE: [REDACTED] MSC-05-146-10747

Office: NEW YORK

Date: DEC 18 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.

A handwritten signature in black ink, appearing to read "R. 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. 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 February 23, 2005. The 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 director denied the application, finding that 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 requests that his Form I-687 application be considered for approval.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6, and 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 period, 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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 23, 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 showed his first address in the United States to have been [REDACTED] Bronx, New York, from December of 1981 to April of 1999. Similarly, at part #33, he showed his first employment in the United States to have been that of a self-employed street vendor in New York from December of 1981 to February of 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided an affidavit from [REDACTED] in which she stated that she has been associated with the applicant since April of 1987. She further stated that she knows the applicant to be an honest, trustworthy, reliable, hardworking, pleasant, and thoughtful person. The affiant submitted a photocopy of her New York State Driver License issued to her on December 28, 1999. Here, the affiant fails to specifically state when she met the applicant, where she met the applicant, under what circumstances she met the applicant, and whether she met him in the United States. Moreover, the affidavit refers only to a time period since 1986, with no mention of the applicant's entry into or residence in the United States before that time. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Although Ms. [REDACTED] attested to the applicant's residence in this country since 1987, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can only be accorded minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that she was basing her decision upon the decision she rendered in the Notice of Intent to Deny (NOID), where she 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 director noted in the NOID that the applicant during his interview with Citizen and Immigration Services, stated that he originally came to the United States for a couple of months in 1981, and thereafter returned to Gambia to attend high school, and thereafter, returned to the United States in 2001. The director also noted that the single affidavit submitted by the applicant as evidence was insufficient to establish his residence in the United States during the requisite period. The director denied the application, finding that 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 request that his I-687 application not be cancelled, that he wishes to contribute to the socio-economic welfare of the United States, and that revoking or canceling his application will be psychologically damaging to him. The applicant does not submit any additional documentation.

In a sworn statement taken during the applicant's interview before [REDACTED] U.S. Citizenship and Immigration Services, on November 2, 2005, the applicant explained in part:

I was born in [REDACTED] . . . I went to school in Gambia. I graduated from High School. I was 19 at the time. High School in my country is 5 years. The school was in the capital of [REDACTED]. The first time I came to America was in 1981 for a couple of months [but] I went back to go to high school.

The applicant submitted his Form I-687 application that he signed under penalty of perjury on February 23, 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 showed his first address in the United States to have been [REDACTED] Bronx, New York, from December of 1981 to April of 1999. Similarly, at part #33, he showed that his first employment in the United States to have been that of a self-employed street vendor, from December of 1981 to February of 2005. The applicant also stated at part # 32 of the Form I-687 application that he was only absent from the United States, since his initial entry, from January of 2000 to April of 2000 when he traveled to Gambia for a family reunion.

The sworn statement made by the applicant during his interview on November 2, 2005, directly conflicts with his statements made under penalty of perjury on his Form I-687 application. The statements in the Form I-687 application do not indicate that the applicant returned to Gambia, as asserted by him during his interview, except for a brief absence from January of 2000 to April of 2000 when he traveled to Gambia for a family reunion. The applicant indicated on his Form I-687 application that he was born September 16, 1967. It is noted that the applicant would have been fourteen years of age when he initially arrived in the United States in 1981 as an illegal alien, and that it is highly unlikely that he was able to obtain an apartment and employment under those circumstances, as alleged. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted an attestation from only one person concerning a period subsequent to the requisite period. In addition, the affidavit from [REDACTED] referred to above lacks sufficient detail.

The absence of sufficiently detailed documentation to support or 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 applications and those made during his interview, 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 for the requisite period 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.