



U.S. Citizenship  
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Services

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LD

FILE: [REDACTED]  
MSC-04-335-11160

Office: NEW YORK

Date: DEC 20 2007

IN RE: Applicant: [REDACTED]

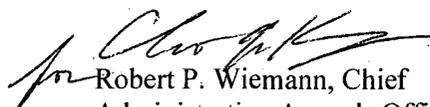
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a .

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. 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. 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. Specifically, the director noted that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on June 27, 2005, the applicant stated that he entered the United States for the first time in March of 2003. The director found that this indicated that the applicant was not continuously residing 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 asserts that the director erred in her decision. He states that he did not indicate that he entered the United States for the first time in March of 2003. He goes on to say that he first entered before January of 1982 and resided continuously in the United States for the duration of the requisite period. He submits additional evidence in support of his application.

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. 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 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.* At 80. 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 30, 2004. 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 address in the United States during the requisite period to be [REDACTED] in the Bronx, New York where he lived from August 1981 until February 1994. At part #32, where the applicant was asked to list all of his absences from the United States since he first entered, he indicated that he went to the Gambia from February 1994 until March 2003 to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States began in May 2003, when he began to work for the Bakery Express in Queens, New York as a salesman. It is noted that the applicant showed no other employment in the United States at any time.

At his interview with a CIS officer on June 27, 2005, the applicant stated that he first entered the United States in March 2003. In a signed, sworn statement taken from the applicant on June 27, 2005, the applicant stated that he went to a Koran School from the ages of six (6) to sixteen (16) years of age. It is noted that as the applicant was born in 1970, this indicates that he attended school from approximately 1976 to 1986. He stated that from the age of twelve (12) to twenty-two (22) he worked in the Gambia on his father's farm. It is noted that this indicates the applicant worked in the Gambia from approximately 1982 until 1992. The applicant further stated that his wife and three children, his parents and his siblings live in the Gambia.

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 did not provide documents that are relevant to the requisite period.

The applicant did submit certificates issued to him in both the United States and in the Gambia that attest to his having successfully completed coursework on dates after May 4, 1988. He also submitted earnings statements from his place of employment in 2005. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these certificates verify the applicant's presence in the United States and in the Gambia subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since August of 1981 when he was eleven (11) years old. The only evidence submitted with the application is not relevant to the 1981-88 period in question. The applicant further signed a sworn statement detailing what he was doing in the Gambia for the duration of the requisite period and stating that he did not ever enter the United States until March of 2003.

In her Notice of Intent to Deny (NOID), dated August 17, 2005 and then dated subsequently on February 21, 2006, the director noted the above and stated that the applicant had failed to meet his burden of establishing by a preponderance of the evidence that he had resided continuously in the United States for the duration of the requisite period.

In response to the director's NOID, the applicant submitted a letter on September 1, 2005 in which he stated that the CIS officer who interviewed him did not conduct his interview in a professional manner. In this letter, he asserts that he first entered the United States in August of 1981 but that the first time he entered the United States with a visa was in March of 2003. He asserts that he did not sign the sworn statement that is in the record. It is noted that the applicant's signature is shown on the Record of Sworn Statement in the file.

There is a second letter in the record that is dated September 9, 2005. In this letter, the applicant states that he attended school until sixth grade in the Gambia. He goes on to say that he has other certificates from training courses. The applicant asserts in this letter that he would like to work legally in the United States.

Also in the record is a letter from the applicant dated October 1, 2005 in which he indicates that he is submitting his marriage certificate and the birth certificates of his three (3) children. The applicant's marriage certificate indicates that he was married in Africa in May 1990. It is noted that on the applicant's Form I-687 he indicated that he was not absent from the United States until 1994. This casts doubt on whether the applicant has fully and accurately represented the dates of his absence on his Form I-687.

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 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).

In denying the application on June 6, 2006 the director noted that her office received information from the applicant in response to her NOID, but stated that it did not overcome her grounds for denial as stated in her NOID.

On appeal the applicant furnishes the following documents in support of his application:

- A statement in which he asserts that the CIS officer who interviewed him on June 27, 2005 must have misunderstood him because he did not indicate at that time that he first entered the United States in March of 2003. He asserts that he has resided continuously in the United States since before January of 1982. He attests to the credibility of the affidavits he has submitted. He asserts that his father attempted to file for legalization during the original legalization period but was turned away.
- A letter from [REDACTED] the owner of Touch of India Restaurant dated July 5, 2006. In this letter, Mr. [REDACTED] states that the applicant came to the United States in 1981. He goes on to say that the applicant worked in the kitchen of his restaurant from 1994 to 2002. It is noted here that the applicant indicated on his Form I-687 that he resided in the Gambia from 1994 until March of 2003. It is further noted that the applicant did not indicate that he ever worked for this restaurant on his Form I-687. Here, Mr. [REDACTED] indicates that the applicant entered the United States in 1981, but he fails to state how he knows this, when he did not employ the applicant until 1994. As the dates of employment in this letter are subsequent to the requisite period, as this letter shows employment that is not consistent with what the applicant showed on his Form I-687 and because of it is significantly lacking in detail, this letter can be accorded very minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] a dated July 2, 2006 that states that the applicant worked in Balaka Indian Restaurant from 1987 to 1994. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, Mr. [REDACTED] does not state the applicant's exact period of employment, whether there were periods of layoff, what the applicant's duties were, or whether the information regarding the applicant's dates of employment was taken from official records. There is no address indicated for the applicant during his time of employment. In this affidavit, Mr. [REDACTED] goes on to say that he knows that the applicant entered the United

States in 1981. Here, Mr. [REDACTED] does not state when he first met the applicant, whether it was in the United States, or how he knows that the applicant entered the United States in 1981. It is noted that the applicant did not indicate that he ever worked for this restaurant on his Form I-687. Because this letter is significantly lacking in detail and because it contains testimony regarding the applicant's employment during the requisite period that is not consistent with what he showed on his Form I-687, this letter can be accorded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] dated July 4, 2006 in which Mr. [REDACTED] states that he personally knew the applicant since he was a child. Here, Mr. [REDACTED] does not indicate when he met the applicant, where he met the applicant or whether he met him in the United States. He fails to provide an address at which he personally knows the applicant resided during the requisite period. He does not offer proof that he himself resided in the United States during the requisite period. Though not required to do so, Mr. [REDACTED] provides his certificate of naturalization issued on September 17, 2002 as proof of his identity. Because this letter is significantly lacking in detail, and does not establish that Mr. [REDACTED] knew the applicant during the requisite period, it carries no weight in establishing that the applicant resided continuously in the United States during the requisite period.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted three (3) letters as corroborating evidence of his continuous residence during the requisite period to satisfy his burden of proof. However, as was noted above, the two (2) employment verification letters submitted by the applicant conflict with what the applicant showed as his employment on his Form I-687. The letter from Mr. [REDACTED] does not clearly correspond to the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only two (2) people that clearly concern that period. These attestations are not consistent with other evidence in the record and are significantly lacking in detail.

The absence of sufficiently detailed 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 in documents in the record and his reliance upon documents that are not consistent with other evidence in the record, 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.