



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-364-10356

Office: CLEVELAND (COLUMBUS)

Date: JUL 12 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, Cleveland. The director reopened the matter, *sua sponte*, and affirmed his decision to deny the application. The matter 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 September 29, 2005. On November 17, 2005, the director of the Regional Processing Center in Missouri issued a Notice of Intent to Deny (NOID) the Form I-687 application, finding that the applicant had failed to provide evidence 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 Form I-687 with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988, and that he failed to provide evidence of continuous physical presence and that he was admissible as an immigrant, as required. He was informed that failure to respond to the NOID within thirty days would result in a denial of his application. In response, the applicant submitted an affidavit from [REDACTED] certifying that she was the applicant's friend and had known him since 1982. On December 13, 2006, the CIS office in Columbus, Ohio, sent the applicant a notice of interview for January 29, 2007 along with a request for additional evidence of residence and physical presence during the statutory period. On that date, the district director determined that the applicant had failed to appear for his interview or provide a valid reason for his failure to appear and, therefore, his Form I-687 application was considered abandoned and was denied on that basis. Citing to 8 C.F.R. § 103.2(b)(15), the director noted that a denial due to abandonment may not be appealed. The applicant, through counsel, filed a motion to reopen, informing the director that the applicant's neighbor had received the interview notice and did not notify the applicant until after the date of the interview. An applicant for adjustment of status under section 245A of the Act does not have the right to file a motion. 8 C.F.R. § 103.5(b). The director reopened the matter, *sua sponte*, and affirmed his decision to deny the application, noting that there was no proof that the neighbor had received the interview notice, and that CIS had sent the interview notice to the correct address.

On appeal, the applicant asserts that he did not receive notice of his interview and that CIS failed to take into account the reason for his failure to receive notice and failure to appear for his interview. He submits his own affidavit and an affidavit from [REDACTED], a resident at the same apartment complex as the applicant. The applicant claims that he did not receive the notice of interview until February 16, 2007 because it had been delivered to [REDACTED]; and both affidavits state that [REDACTED] was out of town and did not return and discover the notice until after the interview date. The applicant requests that his I-687 application be reopened and adjudicated.

The record reflects that CIS mailed the notice of interview to the applicant at his last known address as required by regulation. 8 C.F.R. § 103.5a. The applicant explained that he did not receive the notice until

after the date of the interview, which was scheduled for January 29, 2007 and, on March 20, 2007. However, as noted by the district director, notice was properly sent to the correct address. The applicant failed to appear for a personal interview as scheduled and as required by regulation. 8 C.F.R. § 245a.2(j). If an individual requested to appear for an interview does not appear, CIS does not receive his or her request for rescheduling by the date of the interview, or the application has not been withdrawn, the application shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). The district director, therefore, correctly denied the I-687 application.

Beyond the decision of the district director, the AAO also finds the applicant ineligible for temporary resident status because he has failed to provide evidence in support of his claim of entry and residence in the United States for the statutory period. Although this issue was raised in the NOID, *supra*, it was not addressed in the district director's denial, which is the subject of the appeal in this case. However, the AAO has the authority to address the issue *de novo*. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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). 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).

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, its credibility and amenability to verification. *See* 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. In this case, the evidence is either contradictory or not relevant, probative or credible.

The record shows that the applicant submitted a Form I-687 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 29, 2005. At part #30 of the Form I-687, where applicants were asked to list all residences in the United States since first entry, the applicant stated that he resided in New York City from January 1980 to March 1987; he stated that he lived in Columbus, Ohio, from August 2000 to the present. At part #32, which asks the applicant to list all absences from the United States since entry, the applicant listed a family visit to Mauritania from March 1987 to August 2000. At part #33, the applicant lists his employment in the United States since entry as warehouse work in Columbus from 2000 to the present and maintenance work in Columbus from 2001 to the present.

In support of his application, the applicant submitted one affidavit, from [REDACTED] *supra*. The affidavit lacks any detail and fails to explain how the affiant, who lists her residence as Columbus, Ohio, knows that the applicant resided in New York from 1982 until he claims to have moved to Columbus in August 2000. The affidavit does not indicate that the applicant entered the United States before January 1, 1982 and is bereft of sufficient detail to support the applicant's claim of residence since 1980. No other evidence was submitted that would lend credibility to the applicant's claim of residence in the United States for the statutory period.

The record also contains an application for asylum (Form I-589), filed by the applicant in October 2000, and his passport, which shows that he traveled from Mauritania and entered the United States at New York with a B1 visa on August 24, 2000. The applicant's asylum application, his statements at a subsequent asylum interview and testimony in immigration court during his asylum hearing directly contradict his I-687 application. In support of his asylum claim the applicant stated that he left Mauritania to study in Algeria in 1980 and moved to Libya a year later to complete his education. He claimed that after he graduated in 1986 he remained in Libya and worked there in a hospital until 1996 when he returned to Mauritania. He stated

that he remained in Mauritania until 2000, when, because of the problems he was experiencing, he came to the United States.

On his Form I-687 application, the applicant's claims of entry into the United States in 1980 and of residence in the United States until March 1987 explicitly contradict his application for asylum. There is no credible evidence in the record that he entered the United States before he was admitted on a B1 visa in 2000.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 through 1988 or of entry to the United States before January 1, 1982. Moreover, the record shows that he has testified that he resided outside of the United States during that time period.

The absence of supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, 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 his parents 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 and on the basis noted above and contained in the district director's decision.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.