

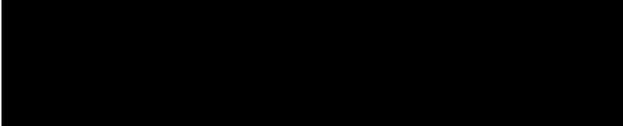


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

4



FILE: [REDACTED] Office: CINCINNATI Date: **JUL 17 2007**
MSC-05-336-10667

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

The director determined the applicant had not demonstrated 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 a Form I-687, Application for Status as a Temporary Resident, 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. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status and denied the application. The director's based this decision, in part, upon the application of the regulations under the Legal Immigration Family Equity (LIFE) Act Legalization provisions. The application of the LIFE Act Legalization regulations was in error; nonetheless, the AAO affirms the director's decision.

On appeal, the applicant fails to address the reason for denial, as stated in the director's decision. The applicant's Form I-694, Notice of Appeal of Decision, provides, "[d]ear officer I understand that all you said in my application will be very hard for me to prove, but this is the only hope I have to maintain [sic] my work authorization to be able to work and feed my family . . ." The applicant indicated on his notice of appeal that he would submit a brief within thirty (30) calendar days, however, as of the date of this decision the AAO has not received a brief or any other evidence from the applicant.

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 applying 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).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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 alien 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, 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 alien applying 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. 8 C.F.R. § 245a.2(d)(5).

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 indicates that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on September 1, 2005. The applicant signed these forms under penalty of perjury certifying that the information he provided is true and correct. Part 30 of the Form I-687 application requests the applicant to provide his residences in the United States since his first entry. The applicant responded with only one residential address. The applicant indicated that he has resided at [REDACTED]

██████████ Cincinnati, Ohio from June 2004 until the present. Part 33 of the Form I-687 application requests applicant to list his employment in the United States since entry. The applicant responded that he was employed in New York, New York as a Vendor from February 1982 until February 1986 and January 1988 until February 1990. Part 32 of the Form I-687 application requests the applicant to list his absences from the United States since his entry. The applicant responded that he was in Mauritania for a "family visit" from February 1990 until June 2004. The applicant's Form I-687 supplement worksheet requests the applicant to provide a "Yes" or "No" response to the following question: "Did you enter the United States before January 1, 1982, and then reside in a continuous unlawful status, except for brief absences, from before 1982 until the date you (or your parent or spouse) were turned away by the INS when you (or your parent or spouse) tried to apply for legalization?" The applicant responded "Yes" to this question, indicating that he had continuously resided in the United States during the requisite period. Although the applicant indicates that he has continuously resided in the United States during the requisite period, documentation contained in his record is materially inconsistent from this claim.

The applicant failed to provide sufficient corroborating evidence of his continuous residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), the burden is on the applicant to prove by a preponderance of the evidence that he has resided in the United States during the requisite period. To meet this burden of proof, an applicant must provide evidence of eligibility apart from his testimony. 8 C.F.R. § 245a.2(d)(6). 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 applicant submitted in support of his application a notarized statement from ██████████ dated February 7, 2006, which provides that ██████████ has known the applicant since December 1981. However, this statement lacks significant detail in that it fails to provide information on the extent of ██████████'s contact with the applicant throughout the requisite period. Moreover, the applicant failed to recall ██████████'s name during his Form I-687 interview. The director's Notice of Decision provides, "[y]ou were asked who signed your submitted affidavit. You stated that it was your friend who you had known since 1981. You were asked to tell the Service what your friend's name was. You stated that you couldn't remember." On appeal, the applicant has failed to address this inconsistency. Therefore, the notarized statement from ██████████ cannot be given any weight as credible corroborating evidence of the applicant's residence in the United States during the requisite period. 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. 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 his claim.

Furthermore, the applicant's record contains evidence that he has engaged in the willful misrepresentation of material facts to establish his eligibility for temporary resident status. The director's Notice of Decision explains the following inconsistency:

During your interview before this Service on March 31, 2006, you testified under oath you entered the United States for the first time in 1981. You stated that in 1982 you returned to Gabon and lived in Gabon approximately one year. You claimed to have returned to the United States and to have resided in the United States from 1983 until 1990 with no trips outside of the United States even if only of one day's duration. You were asked where you lived between 1983 and 1990. You stated that you lived at the same address for all seven years. You stated that you think that you lived on 12th Street in Brooklyn, but are not sure. You could not remember the name of the apartment complex where you claimed to have lived.

The applicant failed to respond to this issue on appeal. The applicant's testimony that he entered the United States in 1981 and then resided in the United States from 1983 until 1990, is materially inconsistent with documentation in his file. The applicant filed a Form I-589, Application for Asylum, with CIS on August 4, 2004. The applicant signed this application on July 14, 2004, under penalty of perjury, certifying that the information contained in the application is true and correct. On August 31, 2004, the applicant signed this application again under oath before an immigration officer, swearing that the contents of the application are true to the best of his knowledge. The applicant's Form I-589 application provides that his first date of entry into the United States was June 4, 2004. The applicant provided a copy of his I-94 card as evidence of his first date of arrival on June 4, 2004. Part A III of the Form I-589 requests the applicant to provide information about his background. The applicant indicated under this part of the application that he resided in Mauritania from 1955 until 1973 and then he resided in Gabon from 1977 until 2004. The applicant stated that he was employed as clothes vendor from 1980 until December 2003 in Gabon.

The Chicago Asylum Office Director's Notice of Intent to Deny (NOID), dated September 16, 2004 provides, "[y]ou credibly testified that . . . You traveled to other countries and lived in the Ivory Coast for about 2-3 years and finally settled in Gabon from 1980 to 2004. During your stay in Gabon, you obtained legal residency and lived there comfortably . . ." The applicant did not rebut this finding in his response to the NOID. The applicant was notified of the material inconsistencies found between his Form I-687 and Form I-589 in the Cleveland District Director's denial notice of his Application for Status as a Temporary Resident. The Cleveland District Director's Notice of Decision provides that, "[y]ou previously submitted an application for asylum with this Service on August 4, 2004. On your asylum application and in your interview in connection with the application, you stated that you had been living in Gabon between 1980 and 2004. You stated that you first entered the United States on June 4, 2004." On appeal, the applicant again failed to response to this inconsistency.

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. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The director's Notice of Denial notified the applicant of the aforementioned derogatory information. The applicant has since failed to provide a written statement and/or additional evidence to address this issue. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides that, "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible." The inconsistency between the applicant's Form I-687 application and his Form I-589 application leads to a finding that he has engaged in the willful misrepresentation of material facts in an attempt to establish his continuous residence in the United States during the requisite period. Thus, the applicant has rendered himself inadmissible to the United States, pursuant to Section 212(a)(6)(C) of the Act, for this reason.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information, which establishes the applicant made material misrepresentations, undermines the credibility of the applicant's claim of residence in the United States for the requisite period. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided in the United States since prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, as required under 8 C.F.R. § 245a.2(d)(5).

Given the applicant's contradictory statements on his applications and his reliance upon a document 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 pursuant to 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.

The fact that the applicant made material misrepresentations in an attempt to establish his continuous residence within the United States for the requisite period renders him inadmissible pursuant to Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). Since the applicant failed to establish that he is admissible to the United States as required by Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), he is ineligible to adjust to temporary resident status on this basis as well.

ORDER:

The appeal is dismissed with a finding that the applicant willfully misrepresented of material fact. This decision constitutes a final notice of ineligibility.

FURTHER ORDER:

The AAO finds that the applicant knowingly misrepresented a material fact in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).