



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1

JUL 25 2007

FILE: [REDACTED]
MSC-05-190-10425

Office: DETROIT

Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. 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, Detroit, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the evidence the applicant submitted in response to the Notice of Intent to Deny (NOID) was not sufficient to overcome the grounds for denial specified in the NOID because the evidence was found to be inconsistent with other evidence obtained by the director. In the NOID, the director had indicated the applicant failed to meet the burden of proving his eligibility for temporary resident status.

On appeal, the applicant provided additional documentation in an attempt to clarify the apparent inconsistencies identified by the director.

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 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).

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 and 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 Citizenship and Immigration Services (CIS) on April 8, 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 indicated he resided at the following addresses during the statutory period: [REDACTED] Kansas City, Kansas, from June 1981 to September 1986; and [REDACTED], Nashville, Tennessee, from October 1986 to November 1988.

The applicant also included five affidavits with his application. [REDACTED] the applicant's cousin, stated that the applicant resided in Kansas City, Missouri. The affiant relocated to Kansas City in August 1983 and then moved in with the applicant. In May 1985 the affiant moved to Nashville, Tennessee. The applicant joined the affiant in Nashville in October 1986. It is noted that this affidavit appears to be inconsistent with the applicant's statements on Form I-687, which indicated he lived in Kansas City, Kansas, rather than Kansas City, Missouri. However, it is also noted that the discrepancy may be due to the close geographic proximity between Kansas City, Kansas, and Kansas City, Missouri. [REDACTED] stated that she has known the applicant since he arrived in the United States in the summer of 1981 and became his close friend. She affirmed that the applicant came to the United States in the summer of 1981 and remained in the United States until November 1988. [REDACTED] the applicant's uncle, stated in his affidavit that he was aware that the applicant traveled to the United States in 1981 and remained here until he returned to Nigeria in 1988. The affiant stated that he "always" communicated with the applicant

while he was in the United States. [REDACTED] a close family friend of the applicant's father, stated the applicant "traveled to the United States in 1981 until he came back to Nigeria" in November 1988. The affiant also stated that he "always communicated with [the applicant] through telephone several times while residing in the United States." [REDACTED] stated that she met the applicant in the fall of 1981 through a mutual friend soon after the applicant arrived from Nigeria. The affiant became good friends with the applicant and they remained friends throughout the applicant's time in the United States until he departed in the fall of 1988. [REDACTED] affirmed that the applicant was in the United States from the time she met him in 1981 until his return to Nigeria in the summer of 1988. This affidavit is found to be internally inconsistent because it confirms both that the applicant remained in the United States until the fall of 1988 and until the summer of 1988. This inconsistency is material because it calls into question whether the applicant actually resided in the United States throughout the statutory period. Although not required, none of the affiants provided documentation of their identities or residence in the United States during the statutory period.

In response to a NOID issued on November 16, 2005, the applicant submitted a letter from [REDACTED] Public Relations Officer of the Nigerian National Association of Middle Tennessee (Association). [REDACTED] Eson explained that the applicant was a member of the "Nigerian Association" between 1983 and 1988. [REDACTED] also stated "[r]ecords indicate that [the applicant's] residential address at the time was [REDACTED], Nashville, TN." This letter is found to be inconsistent with the information listed on Form I-687, which indicates the applicant was living in Kansas City, Kansas, until September 1986 and that his only address in Tennessee was [REDACTED] Nashville, Tennessee from October 1986 to November 1988. The letter from [REDACTED] is also inconsistent with the affidavit of [REDACTED] who stated that the applicant did not move to Nashville, Tennessee until October 1986. This inconsistency is material because it calls into question whether the applicant actually resided in the United States during the statutory period.

In denying the application the director questioned the validity of the letter from [REDACTED] Upon accessing the Nigerian National Association of Middle Tennessee website address listed on the letterhead on which [REDACTED]'s letter was printed, the director found that the Association was not formed until 1999. The director found that the issues regarding the validity of the letter from [REDACTED] called into question the credibility of the applicant's previous testimony because the letter from [REDACTED] was submitted by the applicant.

On appeal the applicant provided another letter from the Association signed by [REDACTED] Public Relations Officer. [REDACTED] explained that the Association had a predecessor organization called the "Nigerian Students Union in the Americas" (Union) that had activities in the late 1970s and continuing into the 1980s. [REDACTED] stated that [REDACTED] would have been aware of Union activities and participants during the 1980s because he was a resident and active in the community since that time.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. One of the affidavits submitted by the applicant conflicts with itself. The first Association letter the applicant submitted conflicts with the

applicant's statements and one of the affidavits he submitted. All of the affidavits the applicant submitted lack sufficient detail and supporting documentation to overcome the inconsistencies within the affidavit and between the Association letter and the other evidence.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and supporting letter and affidavits, and the applicant's 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.