



U.S. Citizenship
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Services

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FILE:

[Redacted]
MSC-05-270-10095

Office: Chicago (Indianapolis)

Date: JUN 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:

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, Los Angeles, 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 his parents 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 pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a letter from [REDACTED] Archbishop of the African Israel Nineveh Church based in Kisumu, Kenya to further support his assertion that he has lived in the United States since prior to January 1, 1982.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States from prior to January 1, 1982 through the date his parents attempted to file a Form I-687 application with the Service during the period between May 5, 1987 and May 4, 1988; and to establish his continuous physical presence in the United States from November 6, 1986 through the date his parents tried to apply for legalization during that period from 1987 to 1988. Here, the submitted evidence is not relevant, probative or credible.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 27, 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 listed two addresses, the first from October 1981 to May 2000 at [REDACTED], the Bronx, New York; and the second from August 2000 to the present at [REDACTED], Indianapolis, Indiana. At part #32, which asks the applicant to list all absences from the United States since entry, the applicant listed two family visits to Kenya, one from December 1986 to April 1987, and the other from May 2000 to August 2000. At part #33, the applicant lists his employment in the United States since entry as "self employed" beginning in May 1993, as a vender when he resided in the Bronx and as an artist when he resided in Indianapolis.

To establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided (1) a form affidavit, dated December 27, 2005, by [REDACTED], residing in Washington DC, attesting to the applicant's continuous residence in the United States since 1981 (in the cover letter accompanying the documents, the applicant referred to [REDACTED] as his uncle); (2) a lease agreement executed on November 1, 1981, indicating that [REDACTED] and the applicant would be occupying the premises at [REDACTED] in the Bronx on a month-to-month basis (the applicant referred to [REDACTED] as his guardian when referring to this document); (3) a copy of a personal check dated 4/7/1981, made out to "Income Tax Division," apparently from [REDACTED] at the above noted address,

(4) a copy of a Form I-94 indicating that the applicant was admitted on a B-2 visa on October 5, 1981 until some time in December 1981 (day is illegible) and that his address in the United States would be the Bronx address noted above, although the apartment number is illegible; and (5) a consular cash receipt from Nairobi for a B-2 dependent visa for the applicant, dated September 15, 1981.

A CIS officer interviewed the applicant on October 14, 2005. Based on the officer's interview notes, the applicant stated that he arrived in New York with his parents in 1981 and stayed with his relative; "he did not go to school – farmers"; and his "parents applied [for legalization]" for him, but he "doesn't know [any additional information]." CIS issued a Notice of Intent to Deny on April 7, 2006 for failure to provide evidence of continuous unlawful status and physical presence in the United States as required. The applicant did not provide further evidence to overcome this finding, and his application was denied accordingly on May 1, 2006.

On appeal, the applicant submitted one additional document, a letter dated May 25, 2006 from the Archbishop of the African Israel Nineveh Church in Kenya, residing in the United States at that time. The Archbishop's letter stated the applicant's name, date and place of birth, and the names of his parents, and added that the family had moved to the United States in the early 1980's, returned to Kenya for Christmas holiday in 1986, and that the applicant was baptized on December 24, 1986, noting that "for this reason, I know [the applicant] from his childhood to this day." It is noteworthy that this letter indicates that the applicant was born in a village in Western Kenya, while the applicant's passport and Form I-687 indicate that he was born in Nairobi.

The record indicates that the applicant was born in Nairobi, Kenya on January 9, 1975. The Form I-94 establishes that he entered the United States on October 5, 1981, when he was seven years old. However, only two documents, the form affidavit from [REDACTED] and the letter from the Archbishop, are relevant to the time period in question and the applicant's claim that he resided in the United States from prior to 1982 through the date his parent or parents attempted to file a Form I-687 application for him between May 5, 1987 and May 4, 1988. These documents do not provide sufficient evidence of residence.

The letter from the Archbishop is inconsistent with information provided by the applicant regarding his place of birth and does not mention where the applicant resided in 1987 or 1988 or state any basis for the affiant's knowledge of the applicant. It therefore lacks relevance, probative value and credibility. The form affidavit from [REDACTED] fails to mention any relationship with the applicant, though the applicant referred to the affiant as his uncle or his guardian; it also lacks any details that might explain credibly why the applicant resided with the affiant since the time he was seven years old, did not attend school and was under the guardianship of the affiant, as stated by the applicant. Although the applicant indicated on his Form I-687 application that his parents were alive, and stated at his interview that they attempted to apply for legalization for him during the original application period, there is no evidence from or about them to indicate that they resided in the United States at that time or that would lend credence to his claimed presence in the United States under the guardianship of his uncle.

On his Form I-687 application, the applicant stated that he had been absent two times from the United States since his entry in 1981, both times for brief family visits to Kenya, indicating that he returned to

the United States in April 1987 and August 2000 and that he did not leave the United States from April 1987 to May 2000. A Kenyan exit stamp in his passport dated February 27, 1999, however, contradicts this statement.

In denying the application, the director found that the applicant had submitted no credible evidence that he was in the United States during the required time period. The AAO agrees with this finding and notes that the evidence submitted does not support the applicant's claims of residency and contradicts some of his statements. The two affidavits in the record are bereft of sufficient detail to support the applicant's claim of residence since 1981.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the period from 1982 through 1988. He has submitted one affidavit concerning that period and one letter that refers to the years 1981 to 1986. Both documents lack sufficient detail and lack credibility.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies 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 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 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.

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