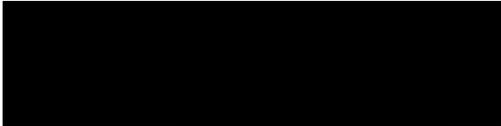




U.S. Citizenship
and Immigration
Services

41

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE: [REDACTED]
MSC-05-133-11136

Office: New York

Date: MAY 18 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 F. Wiemann, Chief
Administrative Appeals Office

PUBLIC COPY

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, 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 pursuant to the terms of the CSS/Newman Settlement Agreements and denied the 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for 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 alien 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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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).

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 including affidavits 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 (BIA 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 applicant's Form I-687, Application for Status as a Temporary Resident, indicates that he has resided in the United States since 1981. Part 30 of the application form requests the applicant to list all of his residences in the United States since his first entry. The applicant indicated in part that he resided at Hotel Mansfield Hall in New York, NY from 1981 until 1983; and [REDACTED], New York from 1984 until November 1998. Part 33 of the application form requests the applicant to list his employment history in the United States, dating back to January 1, 1982. The applicant indicated that he has been "self employed" as a street vendor in New York, NY since 1981 until the present time. However, the applicant has failed to provide credible evidence to corroborate his purported residence and employment in the United States.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence. An applicant may also provide "any other relevant document" as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the district director's Notice of Intent to Deny, the applicant submitted two affidavits to corroborate his residence in the United States during the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, "[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." The weight to be given to affidavits depends on the totality of the circumstances. Affidavits are evaluated based on the affiant's specific, personal knowledge of the applicant's whereabouts during the time period in question, and documentation to verify the affiant's credibility such

as a copy of his/her identity document, contact information, and evidence that he/she was present in the United States during the statutory period. The applicant submitted a "fill in the blank" affidavit, dated February 21, 2006, which fails to provide the name and address of the affiant. Therefore, this affidavit can not be afforded any weight as corroborating evidence. The applicant has also submitted an affidavit from [REDACTED], which state he met the applicant in 1984 at a mosque in New York City. This affidavit states, "[w]e meet at religious ceremony we had almost every year at NYC and talk about once a week on the phone. I considered him a friend. I visited his famaly [sic] in Senegal. Very good caractar [sic]. Fine man." Although this affidavit provides some details, it is vague in several respects. The affidavit fails to provide specific information on the affiant's knowledge of the applicant's continued presence in the United States since their first meeting in 1984, and the affiant fails to provide his contact information or identity document. Consequently, this affidavit does not establish by a preponderance of the evidence that the applicant has resided in the United States during the requisite period.

In the Notice of Intent to Deny, the district director noted that the applicant made several statements under oath that contradict the statements made on his application. In particular, the applicant testified that in 1982 he was married in Senegal, and his wife has never been to the United States. The applicant also testified that he has five children with his wife born in 1982, 1986, 1997, 1999 and 2000. Finally, the applicant testified that he returned to Senegal for a period of three months in 1986. An applicant for temporary resident status must establish *continuous* unlawful residence in the United States. Continuous residence is satisfied if the applicant has not had a single absence from the United States in the excess of forty-five (45) days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the applicant attempted to file a Form I-687 application with the Service in the original legalization application period. See 8 C.F.R. § 245a.2(h)(i). The regulation at 8 C.F.R. § 245a.2(h)(i) notes that an exception will be made if the applicant "can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed." The applicant's response to the Notice of Intent to Deny provides that, "[a]s far as the 1986 visit to Senegal, I know I exceeded the time allowed, but my family was falling apart, and I had to stay longer to fise [sic] the problems. And, that situation should be a mitigating circumstance." However, the applicant has failed to provide specific details on the emergent reason he could not return to the United States. Consequently, even if the applicant had established residence in the United States from prior to January 1, 1982, he has failed to satisfy the requirement of continuous residence during the requisite period.

In the Denial Notice, the district director states that the applicant has failed to provide any credible or verifiable evidence that he has met any of the statutory residence requirements for temporary residence and has not met the burden of proof in the proceedings. On appeal the applicant has provided a hand written statement of his reason for appeal. This statement is largely illegible; however it appears to indicate that the applicant would attempt to submit additional evidence. As of the date of this decision, additional evidence has not been submitted by the applicant.

In conclusion, the applicant has failed to provide sufficient corroborating documentation to establish by a preponderance of the evidence 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 with the Service in the original legalization application period, 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.