



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-271-11777

Office: BOSTON, MA

Date: SEP 07 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, Boston, and that decision 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. Specifically, the director noted that during his interview with a CIS officer the applicant stated that he left the United States in December 1986 and did not reenter the United States until March 1987. The director found that this statement indicated the applicant did not meet his burden of establishing that he had maintained continuous residence in the United States during the requisite period. 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that while he did remain outside of the United States during the requisite period for a period of time that exceeded forty-five (45) days, his absence from the United States was longer than he originally intended due to emergent circumstances.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants 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 shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

An applicant 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 28, 2005. Part #19 of this application asks applicants to list their mother's name and indicate whether their mother is living or deceased. Here, the applicant showed that his mother's name is [REDACTED] and that she died in 2004. Part #30 of the Form I-687 application asks applicants to list all residences in the United States since first entry. Here, the applicant showed his address in the United States during the requisite period to be [REDACTED] [REDACTED] October 1981 to July 1991. Part #31 asks applicants to list all associations, clubs and churches that they are members of. Here, the applicant did not indicate that he is a member of any associations or churches. Part #32 asks applicants to list all of their absences dating back to January 1, 1982. Here, the applicant showed one absence during the requisite period that occurred between December of 1986 and March of 1987. He shows a second and final absence that occurred after the requisite period, where he states he went to Ghana for a family visit from July to September of 1991. At part #33, where the applicant was asked to list his employment since January 1, 1982, he shows self-employment as a vendor for the duration of the requisite period. Here, he lists his address of residence as his place of employment from October 1981 to July of 1991.

The record also contains a Form I-765, Application for Employment Authorization, submitted by the applicant on July 14, 1993. Here, the applicant showed that his last entry into the United States was on March 2, 1992. It is noted that this conflicts with the absences shown on the applicant's Form I-687, which states that the last time the applicant was absent from the United States was in 1991.

The further record contains a Form I-589, Request for Asylum in the United States, submitted by the applicant on July 14, 1993. Similarly to what he showed in his Form I-765, the applicant indicated that his last arrival into the United States occurred on March 2, 1992. It is noted that this conflicts with the absences shown on the applicant's Form I-687, which states that the last time the applicant was absent from the United States was in 1991.

Also in the record is a Form G-325A, Biographic Information form, signed by the applicant on February 18, 1993. Here, the applicant showed his address of residence from his date of birth, which he showed as July 14, 1961 until 1992 as [REDACTED]. It is noted that this conflicts with what the applicant showed to be his address during the requisite period on his Form I-687 and that this indicates that the applicant has previously submitted evidence indicating that he did not reside continuously in the United States during any part of the requisite period.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided: one (1) envelope; and three (3) affidavits and letters.

Details regarding evidence submitted by the applicant in support of his claim to have maintained continuous residence in the United States during the requisite period include:

- One (1) envelope postmarked December 22, 1981. This letter has no return address and indicates it was mailed to [REDACTED]. It is not clear who the letter was sent to, as there is no name associated with the address. This envelope was sent using three (3) one-hundred (100) cent stamps showing Cape Coast Castle in Ghana. Because there is no name associated with this envelope, it is not clear that it is associated with the applicant. Therefore, this letter cannot be accorded any weight in establishing that the applicant resided continuously in the United States during the requisite period.

Three affidavits and letters as follows:

- An affidavit signed by [REDACTED] and notarized on November 19, 2005. The affiant indicates that she has known the applicant since October 1981 and that he lived in New York, NY from that time until December of 1991. It is noted that the affiant did not show an address at which it was personally known to her that the applicant resided during the requisite period. The affiant stated that she met the applicant because he is a member of her church. It is noted that on part #32 of the applicant's Form I-687, where he was asked to list churches and associations that he belonged to, he did not show that he belonged to a church. Although not required, the affiant provided no evidence of her presence in the United States during the requisite period. As the affiant has not established that she was present in the United States during the requisite period, as she did not indicate an address at which it was personally known to her that the applicant resided, as the affiant did not indicate when or where she met the applicant, and as the applicant did not indicate that he was a member of a church when asked to do so on his Form I-687, the affidavit can be accorded little weight.
- A letter from [REDACTED]. This letter is not notarized. In this letter [REDACTED] indicates she has known "Boateng Fred" since 1986. [REDACTED] also indicates that the applicant is a man of good character and states that she can be contacted at the above listed phone number. It is noted that there is no phone number shown on the letter. In this letter, [REDACTED] does not indicate how or where she met the applicant, nor does she specifically confirm the applicant's residence in the United States for any specific dates within the requisite period. She also fails to indicate whether the applicant was continuously residing in the United States at the time she met him in 1986. In addition, although not required, the affiant provided no evidence of her presence in the United States during the requisite period. Because this affidavit only shows that Ms. [REDACTED] met the applicant in 1986 and does not indicate where she met him or indicate a residence in the United States at which it is personally known to her that the applicant resided and

because it is not clear that [REDACTED] was residing in the United States during the requisite period, this letter can be accorded very little weight.

- A letter from [REDACTED] This letter is not notarized. In this letter [REDACTED] indicates that she has known [REDACTED] since 1982. [REDACTED] also indicates that the applicant is a man of good character and states that she can be contacted if more information needed. In this letter, [REDACTED] does not indicate how or where she met the applicant, nor does she specifically confirm an address at which that the applicant resided in the United States for any specific dates within the requisite period. She also fails to indicate whether the applicant was in the United States at the time she met him in 1982. In addition, although not required, the affiant provided no evidence of her presence in the United States during the requisite period. Though this letter shows that [REDACTED] met the applicant in 1982, it does not indicate where she met him or state a residence in the United States at which it is personally known to her that the applicant resided. Because it is not clear that [REDACTED] was residing in the United States at that time, this letter can be accorded very little weight. Further, this affidavit is found to be insufficiently detailed to confirm the applicant's residence during the requisite period.

In determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, supra.

It is noted that here, the affidavit and letters submitted by the applicant are not consistent with information provided by the applicant on his Form G-325A, where he indicated that he resided in North Accra, Ghana, West Africa for the duration of the requisite period.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of a petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since October 1981. The evidence submitted with the application that is relevant to the 1981-88 period in question does not establish by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of that requisite period.

In denying the application the director noted the above, and that the applicant testified under oath at the time of his interview on December 6, 2005 that he lived in Ghana from December 1986 to March 1987 for a period of time that exceeded forty-five (45) days. Though not noted by the director, it is also noted

here that on his G-325A Biographic Data Form, submitted with his Form I-589 Request for Asylum in the United States, the applicant indicated that he resided continuously in Ghana until 1992. It is further noted that the applicant also indicated on both his Form I-589 and his Form I-765 that he last entered the United States on March 2, 1992. This is not consistent with information provided by the applicant on his Form I-687, where he showed that he last entered the United States in September of 1991.

On appeal the applicant attempts to explain these contradictions. He submits a notice of appeal on [sic] decision. This notice of appeal states that while the applicant was absent for a period of time during the requisite period that exceeded forty-five (45) days, he stayed out of the country for longer than he originally planned to due to the fact that his mother died during this visit. He further states that he had not anticipated that his mother would pass away when he left for his trip to Ghana. It is noted that this absence took place from December 1986 to March 1987.

In the absence of any other information, it is concluded that the applicant was absent for three months, as the director's decision indicates he stated this to the interviewing officer. It is noted that the applicant does not refute this statement in his notice of appeal. As the applicant's absence exceeded the forty-five (45) day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason."

The applicant has explained that he left the United States to see his mother who was ill. The applicant goes on to explain that he remained outside of the United States for more than forty-five (45) days because his mother unexpectedly passed away during his visit and he had to stay to attend her funeral. Though this would indicate that the applicant's return to the United States was delayed because of circumstances that came unexpectedly into being, the applicant's statement regarding the date of his mother's death conflicts with information he provided on his Form I-687. On part #19 of this application, the applicant indicated that his mother [REDACTED] died in 2004. The applicant did not submit any evidence that supports his claim that his mother's death occurred during his absence from December 1986 to March 1987 with his appeal, nor did he provide an explanation as to why he would have previously indicated that she died in 2004 on his Form I-687.

Therefore, though the applicant has stated that the length of time he stayed away from the United States was due to an emergent circumstance, because the explanation for this absence is not consistent with evidence in the record, the credibility of this statement is questioned. Though this was not addressed in the director's decision, further casting doubt on the applicant's claim of having maintained continuous residence during the requisite period is that he showed on his Form G-325A that he maintained continuous residence in Ghana from his date of birth until 1992.

An applicant applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the fact that his claim of residing continuously in the United States conflicts with evidence in the record and because the applicant now claims to have remained outside of the United States due to his mother's unanticipated

death that occurred during the time from December 1986 until March 1987 when he previously indicated she did not die until 2004, the applicant has not established that he continuously resided in the United States for the requisite period or that his absence during the requisite period came unexpectedly into being.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three people concerning that period. As previously stated, because these statements do not establish that the applicant maintained continuous residence in the United States during that period and because they conflict with other evidence in the record, most notably his Form G-325A, doubt is cast on these attestations. The applicant did not submit any additional evidence to establish that he had maintained continuous residence in the United States with his appeal.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the evidence produced by the applicant is neither probative nor credible.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 applicant's contradictory statements on his applications and his 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.