



U.S. Citizenship
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Services

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FILE:



Office: NEW YORK

Date: AUG 05 2008

MSC 05 246 11699

IN RE:

Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

for
Michael T. Kelly
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, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that he had entered the United States prior to January 1, 1982 and resided continuously in an unlawful status for the duration of the requisite period.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on June 3, 2005. The applicant was interviewed on March 20, 2006 in connection with the Form I-687. The director issued a Notice of Intent to Deny (NOID) the application on November 15, 2005 and again on June 27, 2006. Upon review of the record including the applicant's responses to the NOID, the director denied the application.

On appeal, the applicant asserts that he illegally entered the United States in 1981 and lived illegally in the United States for the requisite time period. The applicant contends that his testimony has been credible and detailed and that the affidavits he submitted are credible and amenable for verification and that both affiants lived in the United States before the statutory period.

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 applicant attempted to file the application. Section 245A(a)(2) of the 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on April 3, 2003. The applicant listed his address in the United States during the requisite time period as: [REDACTED] Bronx, New York from September 1981 to October 1991. The applicant listed his employment as a self-employed vendor from September 1981 to April 2005. The applicant indicates on the Form I-687 that he returned to the United States in April 2003; the Form I-687 includes the abbreviation "N/A" in the column for the applicant's date of leaving the United States. The applicant lists the purpose of the trip as a family emergency. The applicant indicates his date of birth is January 13, 1965.

The record also includes the following documentation in support of the application:

- A December 2, 2005 affidavit signed by [REDACTED] who refers to the applicant as [REDACTED] and who declares that the applicant lived in Bronx, New York from September 1981 to October 1991, that the affiant first met the applicant at his brother's funeral in Manhattan, and that the longest time period he has not seen the applicant is six months.
- A December 7, 2005 affidavit signed by [REDACTED] who refers to the applicant as [REDACTED] and who declares that the applicant lived in Bronx, New York from [REDACTED]

- September 1981 to October 1991, that he met the applicant at a friend's party in Yonkers, and that the longest time period he has not seen the applicant is four months.
- A December 6, 2005 affidavit signed by [REDACTED] who refers to the applicant as [REDACTED] and who declares that she has known the applicant since 1984, that she first met the applicant at a christening in September 1984 in Bronx, New York, that she is aware the applicant came to the United States in 1981, and that the applicant told her that he traveled from Ghana to Canada and then to the United States.
 - A November 30, 2005 letter signed by the president of the Ghanaian Association of Westchester, Inc. who states that he has known the applicant through the applicant's membership of the organization where the applicant coaches chess for teens. The letter-writer does not provide dates of the applicant's membership.

The AAO has reviewed the record in this matter and finds that the applicant has not established his continuous unlawful residence in the United States for the applicable time period. The affidavits provided by [REDACTED], and [REDACTED] provide only general information regarding how the affiants first met the applicant. The affiants do not provide any testimony regarding the circumstances and events of their ongoing and subsequent interactions with the applicant. The affidavits lack concrete details that demonstrate sufficient contacts of the affiants with the applicant to establish the applicant's presence for the requisite period. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions. These affidavits are insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The affidavits are not probative in this matter.

The AAO has also reviewed the November 30, 2005 letter signed by the president of the Ghanaian Association of Westchester, Inc. This letter does not indicate when the letter-writer first met the applicant and does not include any information regarding when the applicant joined the organization. The letter is insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous presence in the United States for the requisite time period.

Upon review of the record in this matter, the AAO finds the documentation submitted lacks probative value in establishing the applicant's continuous unlawful residence in the United States for the requisite time period. The deficient affidavits and letter and the applicant's statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack probative value for the reasons noted. The absence of sufficiently detailed documentation to establish the applicant's claim of continuous residence for the entire requisite period detracts 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 lack of sufficiently detailed supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

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