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MSC 05 263 11902

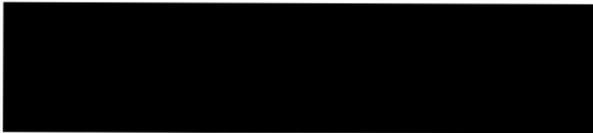
IN RE:

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:



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.

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel contends that the director's decision is erroneous and asserts that the applicant's oral testimony and other supporting evidence establish the applicant's eligibility for the benefit sought.

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 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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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. 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 period, 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.

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, 431 (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 during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that the applicant did not submit supporting evidence at the time the Form I-687 was filed. Therefore, the director issued a notice of his intent to deny (NOID) dated November 15, 2005, instructing the applicant to provide additional evidence in support of his residence claim. In response, the applicant provided the following documentation:

1. A letter dated December 13, 2005 from [REDACTED] of the Calvary Gospel Assembly, Inc., claiming that the applicant is a member of the said religious organization. It is noted, however, that [REDACTED] did not indicate that the applicant had been a member of this religious organization during the statutory period. Furthermore, the applicant did not indicate, at No. 31 of the Form I-687, that he was a member of or was affiliated with any religious organizations during or subsequent to the statutory period. As such, Mr. [REDACTED] statement is inconsistent with the information provided by the applicant in the Form I-687. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of the inconsistency discussed above, the probative value of this letter is minimal.
2. Two undated employment affidavits from [REDACTED]. In the affidavit that appears on the letterhead of Sudden Distributions, Corp., the affiant claimed that the applicant was employed at "the firm city Advertising distributors, INC" as an independent contractor. The affiant claimed that the applicant continued in this job from June to September 1983 as a crew chief in charge of distributing flyers, circulars, and brochures in the New York boroughs. The affiant further stated that he continued to work with the applicant at

Reliable Distribution, Inc. until August 1999 and at Sudden Distribution Corp. from September 1999 until September 2000. In the second affidavit, [REDACTED] provided the dates he claimed to have employed the applicant, but did not indicate that the applicant was an independent contractor. Therefore it is unclear whether the two affidavits are entirely consistent with one another. Furthermore, it is noted that the applicant did not provide any employment information in No. 33 of the Form I-687 regarding his employment in the United States, thereby indicating that he was not employed in the United States during the statutory period or otherwise. Again, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Id.* In light of the inconsistencies discussed above and the applicant's failure to resolve them, [REDACTED] statements will be afforded only minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

3. An undated affidavit from [REDACTED], who claimed to have known the applicant since 1984 and provided the address of the applicant's claimed U.S. residence during that time period. It is noted that this affiant did not provide any further information regarding the events and/or circumstances of the applicant's residence during the statutory period that would substantiate her claim. As such, her statement will only be afforded minimal evidentiary weight.

After the applicant's March 14, 2006 legalization interview, the director issued another NOID dated March 20, 2006, notifying the applicant that the record did not contain sufficient documentation to warrant approval of the application. The director further noted that the statement from [REDACTED], in No. 3 above, was not credible in light of service records showing that she did not arrive in the United States until 1987 and therefore could not have attested to the applicant's residence in the United States as of 1984. The director noted that the documentation on record did not resolve this inconsistency.

In response, counsel submitted a statement dated April 12, 2006, asserting that any inconsistencies in the record are minor and are not material to the applicant's claim. Counsel further explained that prior to Ms. [REDACTED]'s entry into the United States in 1987, she had been residing here illegally and only went back to Ghana in order to receive her immigrant visa after her 1985 marriage to [REDACTED]. In support of this explanation, the applicant provided the marriage certificate of [REDACTED] and [REDACTED] establishing that the two were married in Bronx, New York on May 14, 1985. While this establishes [REDACTED] presence in the United States in 1985, it does not establish that she was residing in the United States in 1984 or that she knew the applicant since that time. Furthermore, by counsel's own admission, [REDACTED] returned to Ghana where she remained until 1987 in order to obtain her immigrant visa. There is no evidence establishing her date of departure. As the length of her absence is unknown, this affiant's ability to attest to the applicant's continuous residence in the United States during the period of her absence is questionable.

The applicant also submitted an undated affidavit from [REDACTED], who claimed to have known the applicant since 1982. The affiant stated that he and the applicant prayed together and discussed the bible. He further claimed that the applicant resided at [REDACTED]

Bronx, New York during his acquaintance with the applicant. While this affidavit is not inconsistent with the information provided by the applicant in his Form I-687, it is lacking in detail and therefore provides little insight into the applicant's life during his alleged residence in the United States during the statutory period. As such, this affidavit will be afforded only minimal evidentiary weight in the proceeding.

The record shows that on October 17, 2006, the director issued a final notice of denial, finding that the applicant did not provide sufficient evidence to support the claim that he had resided in the United States continuously during the statutory period.

On appeal, counsel asserts that the director's decision is erroneous, asserting that the applicant's testimony indicates that his claim is plausible. However, as indicated above, not all of the supporting documentation provided by the applicant was consistent with the information contained in the Form I-687 application. Further, an applicant's claim must be supported with sufficient probative and credible documents. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the present matter, the applicant has submitted deficient affidavits containing few verifiable facts about the applicant's alleged residence in the United States during the statutory period. This considerable deficiency, coupled with other deficiencies discussed above, preclude the AAO from issuing a decision that is favorable to this applicant.

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 in the record discussed above, seriously detracts from the credibility of this claim. As previously stated, 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). Given 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-*, 20 I&N Dec. 77. 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.