

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

FILE:

MSC-05-238-12112

Office: COLUMBUS

Date:

AUG 27 2008

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 if your case was 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, Columbus. The decision is now before the Administrative Appeals Office (AAO) 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.

The applicant represents himself on appeal. The applicant argues that the affidavits submitted below attesting to the applicant's entry and residence in the United States are sufficient to establish his eligibility for temporary resident status pursuant to the terms of the settlement agreements.

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. 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 the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means 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 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.* at 80. 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 meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 26, 2005. The applicant gives his date of birth as July 21, 1970, in Accra, Ghana. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at [REDACTED] from September 1981 to April 1989. Similarly, at part #33, he stated that he was self-employed as vendor in New York City from November 1986 to May 2005.

The applicant submitted no other documentation in support of his application for temporary residence. On November 15, 2005, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any documentation beyond his own assertions that he met the requirements for eligibility pursuant to the terms of the settlement agreements. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

In response, the applicant submitted the following documentation:

- A non-notarized declaration from the Friends of America Int'l Association headquartered in Columbus, Ohio, and dated December 7, 2005. The statement is signed by [REDACTED] who asserts therein that the applicant has resided in the United States since "before 1st January, 1982 and has been an instrumental part of the Ghanaian society."
- A non-notarized declaration from The Dove African Unity, headquartered in the Bronx, NY, and dated December 7, 2005. The statement is signed by [REDACTED], President, who asserts therein that the applicant "was in the Bronx, New York before 1st January, 1982 and participated in various activities by Immigrants." [REDACTED] also asserts that the applicant "has been a dynamic member of this association and has also been an asset to our other sister companies."
- A non-notarized declaration from The Young Actors Association headquartered in Columbus, Ohio, and dated December 9, 2005. The statement is signed by [REDACTED] President, who asserts therein that the applicant "has been in this country before 1st January, 1982." [REDACTED] claims that the applicant attended meetings, and wrote an award winning play.
- A statement from [REDACTED], dated December 5, 2005. [REDACTED] states that the applicant resided in the Bronx, New York, since January 1, 1982 with his uncle. The AAO notes that [REDACTED] does not indicate whether he is related to the applicant. However, the letter lists the same address as the address listed by the applicant on the Form I-687.

The AAO notes that none of the declarants state with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which the applicant was residing between January 1, 1982 and May 4, 1988. The lack of detail regarding the events and circumstances of the applicant's entry and residence is significant in that none of the statements provide any credible, verifiable detail regarding the applicant's circumstances during the requisite period. Indeed, the applicant was 11 years old at the time of his alleged entry. The statements offered by the applicant in response to the NOID provide no information whatsoever about the applicant's early years in this country when he was a child. For these reasons, the declarations listed above have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

The applicant was interviewed by a district adjudications officer on October 13, 2006. The applicant signed a statement at that time indicating that he entered Canada in 1981 with his uncle and father, and sometime thereafter, entered the United States. The applicant stated also that

they lived at [REDACTED], and that he and his uncle and father worked as street vendors selling watches. The applicant stated that he attended classes in the Bronx at Ghanasco, an “unofficial institution in the Bronx.” The applicant claimed that they departed the Bronx in 1989 due to conflicts with the landlord. Thereafter, the applicant stated that he returned to Toronto in 2000 and then took a bus to “JFK.” The applicant claimed that he lived with his uncle at [REDACTED] Island until 2004, and then at [REDACTED] from February 2004 to February 2005, ultimately settling in Columbus, Ohio, in November 2005. The applicant stated that he married his wife in Ghana in 1991. The AAO notes that the applicant does not mention a return to Ghana in 1991 or the [REDACTED] address on his Form I-687.

At his interview, the applicant also submitted several letters and envelopes postmarked to him from relations in Ghana. The AAO observes that the letters and envelopes are marked in red ink with notes from the district adjudications officer indicating that the letters appear to have been falsely aged with coffee, and that the date of one letter, September 21, 1981, does not correspond to the accompanying envelope, postmarked July 8, 1981. Ultimately, the applicant submitted a notarized “confirmation of tenancy” dated March 7, 2006, and signed by [REDACTED] Mr. [REDACTED] stated that the applicant and his father resided with him from June 3, 1981 to July 1, 1983. [REDACTED] lists his current address as [REDACTED] Island. [REDACTED] statement seems to conflict with the information contained in both the applicant’s Form I-687 and his interview statement, in that the applicant does not list any address at [REDACTED] but stated at his interview that he resided there at some point between his sojourns in Toronto in 2000 and 2004. The affidavit lacks detail regarding the location where the applicant lived with the affiant and the applicant’s activities, including whether he attended school during the requisite period. Considering that the applicant was 11 years old when he entered the United States, the lack of detail regarding the applicant’s daily activities calls into question the affiant’s ability to confirm that the applicant resided in the United States during the requisite period. The AAO cannot discern from the Form I-687, the affidavits submitted in response to the NOID discussed above, and the information received at the applicant’s interview, when and how the applicant first entered the United States, allegedly at the age of 11, where he lived, for how long, and how he survived from the date of his entry until the date he filed the application for temporary residence on May 26, 2005.

Inasmuch as the applicant has provided differing accounts of his residence and the circumstances of how he lived in the United States, he has seriously undermined the credibility of his testimony. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The director denied the application for temporary residence on October 13, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States before January 1, 1982 was not credible. The director also noted that the applicant was unable to provide primary or secondary documentary evidence to corroborate his testimony.

On appeal, the applicant offers no additional new evidence. He argues that the affidavits provided are sufficiently detailed to establish his eligibility for temporary resident status. The applicant states once again that he attended Ghanasco, an "unofficial school for illegal immigrant children in Bronx New York" until the age of 18. However, the applicant does not submit any documentation whatsoever to corroborate this claim. For example, the applicant does not submit any school records, or statements, or letters from anyone at this school who could confirm the applicant's statement. Furthermore, the applicant claims now on appeal that he moved to Michigan, back to New York, and ultimately moved to Ohio in 2000. Again, this conflicts with the information cited above.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own inconsistent assertions and the statements discussed above. The declarations lack credibility and probative value for the reasons noted. On appeal, the applicant merely asserts that the director did not accord properly assess the evidence. This statement on appeal, absent additional probative evidence, fails to overcome the objections noted by the district director.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions 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 lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite 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.