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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEWARK

Date:

FEB 08 2008

MSC 05 201 12865

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. 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, Newark. 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, on April 19, 2005. 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 observed that the applicant had not provided any contemporaneous evidence of residence in the United States during the requisite period, and submitted only one affidavit from an individual who claims to have met him in the United States in 1981. The director denied the application as 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, the applicant states that his testimony has been consistent and therefore should be considered credible. He further asserts that the affidavit he submitted was both credible and amenable to verification. He states that he was not able to obtain any government-issued documents because he entered the United States illegally. The applicant states that he has established a prima facie case and he requests that his application be adjudicated on its merits.

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)(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 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).

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 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, 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 continuously resided in the United States in an unlawful status for the duration of the requisite period. 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 Citizenship and Immigration Services (CIS) on April 19, 2005. 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 indicated that he resided at the [REDACTED] on [REDACTED] in New York, New York from December 1981 until April 1985, and at [REDACTED], also in New York, from May 1985 until February 1991. At part #33, where applicants were asked to list all employment in the United States since first entry, the applicant stated that he was self-employed as a vendor at [REDACTED] and [REDACTED] in New York, New York from September 1983 until June 1996. He did not indicate any employment in the United States prior to September 1983.

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. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant did not submit evidence in support of his application. At the time of his interview with a Citizenship and Immigration Services (CIS) officer on January 10, 2006, the applicant submitted a photocopy of his Burkino Faso passport, which contains a U.S. nonimmigrant visa and Form I-94, Departure Record, showing that the applicant last entered the United States on April 28, 2002 as a B-1 nonimmigrant visitor with authorization to remain until July 27, 2002. The applicant also submitted a letter addressed to him from the Social Security Administration, dated November 28, 2005.

Finally, the applicant submitted an affidavit from [REDACTED], dated January 3, 2006. She states that she currently resides in Queens, New York, and indicates that she met the applicant in New York in December 1981, while he was working as a street vendor. She states that she used to buy items from him, that he became a very good friend, and that she still keeps in touch with the applicant. It is noted that Ms. [REDACTED] statement that she met the applicant while he was working as a street vendor in 1981 is inconsistent with the applicant's own statement on Form I-687 that he commenced employment as a street vendor in 1983. She does not state where the applicant was working, how she dates her acquaintance with him, or how frequently she saw the applicant during the requisite period. [REDACTED] does not provide any relevant, verifiable information such as the applicant's addresses of residence during the requisite period. Finally, given [REDACTED] statement that the applicant has been a very good friend of hers for 24 years, the affidavit is significantly lacking in details that would lend credibility to a claim that she has direct, personal knowledge of the events and circumstances of the applicant's residence in the United States. Because it contains information that is inconsistent with the applicant's own testimony and is otherwise lacking in relevant information, the affidavit from [REDACTED] lacks credibility and probative value.

The applicant was notified of the director's intent to deny the application on January 24, 2006, and given an additional 30 days in which to submit additional evidence in support of his application. In response, the applicant did not submit any additional evidence in support of his claim that he continuously resided in the United States in an unlawful status during the requisite period. The record shows that he submitted a photocopy of his current employment authorization card, a photocopy of his foreign birth certificate, and an English translation of his birth certificate.

The director denied the application on June 12, 2006, noting that the applicant had submitted no additional relevant evidence in response to the notice of intent to deny. Accordingly, the director concluded that the applicant had not established his eligibility for temporary residence under Section 245A of the Act.

It is noted here that the director incorrectly referenced in both the Notice of Intent to Deny and in her decision the continuous residence requirements set forth at 8 C.F.R. § 245a.15, which pertain to applications for permanent resident status filed under the Legal Immigration Family Equity (LIFE) Act Legalization provisions. The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). Therefore, the director's error is found to be harmless. All evidence submitted in support of the application, and the credibility and sufficiency of each piece of evidence will be reviewed in accordance

with the continuous residence and physical presence requirements set forth at Section 245(a)(2) of the Act, the regulations at 8 C.F.R. § 245a.2, and the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that his testimony has been both consistent and credible, and that the affidavit provided by [REDACTED] is both credible and amenable to verification. He states that he has established a prima facie case that should be favorably decided on its merits.

The applicant's assertions are not persuasive. The applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted an attestation from only one person concerning that period. However, the only specific information contained in the affidavit from [REDACTED] i.e., that the affiant met the applicant when he was working as a street vendor in December 1981, is inconsistent with the applicant's own statements on his Form I-687. The affidavit is severely lacking in probative value and credibility for the reasons discussed above.

An applicant's failure to provide documentary evidence apart from affidavits cannot be the sole reason for the denial of an application. However, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are lacking in credibility. Again, the only affidavit submitted did not contain substantive, credible information or relevant testimony pertaining to the applicant's claim of continuous residence.

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, consistent supporting 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 reliance upon a single affidavit with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.