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FILE:

MSC-05-146-10160

Office: NEW YORK

Date:

JAN 11 2008

IN RE:

Applicant:

APPLICATION:

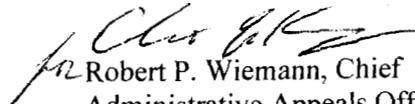
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, New York. 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 stated that the application was denied for the reasons stated in the Notice of Intent to Deny (NOID). In the NOID, 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, the applicant states that he knows he is eligible for temporary resident status under the CSS/Newman Settlement Agreements, he may lack legal advice but he intends to bring new evidence, and he loves America. It is noted that one affidavit submitted by the applicant appears not to have been considered in the director's decision.

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).

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)(1) 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 demonstrate that he resided in the United States 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 Supplement to Citizenship and Immigration Services (CIS) on February 23, 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 listed the following addresses during the requisite period: [REDACTED] on [REDACTED], New York, New York from 1982 and 1985; and [REDACTED], Bronx, New York from 1985 to 1991. The applicant’s failure to list any addresses prior to 1982 casts some doubt on his claim to have resided in the United States from prior to January 1, 1982 until he attempted to file his application for temporary resident status. At part #31, where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided four declarations. As stated above, the declaration from [REDACTED] appears not to have been considered by the director because the declaration did not reach the applicant’s file until after the director issued his decision. Reverend [REDACTED] Minister of Second Southern Baptist Church, stated that he met the applicant in 1981 in the Bronx, New York.

Reverend [REDACTED] stated that the applicant's first apartment residence was at [REDACTED] Bronx, New York. This information is inconsistent with the applicant's Form I-687 application, which indicates the applicant's first residence was at the [REDACTED] on [REDACTED] in New York, New York. This inconsistency calls into question Reverend [REDACTED]'s ability to confirm the applicant resided in the United States during the requisite period. Reverend [REDACTED] also stated that the applicant joined the Second Southern Baptist Church "as Watch Care by [REDACTED]" This statement is also inconsistent with the applicant's Form I-687 application where he failed to list his membership in the Second Southern Baptist Church when asked to list all affiliations or associations with churches. This inconsistency further calls into question Reverend [REDACTED]'s ability to confirm that the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations established in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership and does not state the addresses where the applicant resided during the membership period.

The applicant also submitted a declaration from [REDACTED], who identified himself as the "Super" of [REDACTED] Bronx, New York. [REDACTED] stated that the applicant lived at the [REDACTED] address from March 1985 to December 1991. [REDACTED] also stated that he had known the applicant since then as a, "good, loving and hardworking person." Mr. [REDACTED] provided no details regarding the origins of his knowledge of the applicant, such as whether he knows of the applicant's period of residence through records or first-hand knowledge. He also provided no details regarding his frequency of contact with the applicant. Therefore, this declaration is found to lack sufficient detail to confirm the applicant resided in the United States during the requisite period.

The applicant included a form affidavit from [REDACTED] This affidavit includes the printed statement, "I have personal knowledge that the applicant was living in the United States between 1981 and 1987 based on my personal relations with the applicant during that period." The affiant provided no details regarding the time and manner in which he became acquainted with the applicant, their frequency of contact, the location where the applicant resided in the United States, or the origins of his knowledge of the applicant's residence in the United States. Therefore, this affidavit is found to lack sufficient detail to confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] The declarant stated that he had known the applicant all his life. He was born in the same village as the applicant, in Gambia. The declarant stated that the applicant's father informed the declarant that the applicant was "on his way to state." The declarant also stated, "[s]ometime in March 1981[,] [h]e called me that he is at Buffalo, New York he entered through [the] Canadian Border." It is unclear from this statement whether the declarant learned of the applicant's entry into the United States through the applicant or through the applicant's father. The declarant also stated, "From 1981 until 1999 he kept in touch with me. He always visits me and my family." The declarant also stated, "[the applicant] entered the U.S. since 1981 and he lived here continuously until 1999." Although the declarant indicated he currently resides in the United States, he did not indicate that he resided in

the United States during the requisite period. Therefore, it is unclear whether he has first-hand knowledge of the applicant's continuous residence in the United States during the requisite period. This ambiguity detracts from the value of the declaration as evidence that the applicant resided in the United States during the requisite period.

In denying the application the director explained that the application was denied for the reasons stated in the Notice of Intent to Deny (NOID). In the NOID, 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.

On appeal, the applicant stated that he knows he is eligible for temporary resident status under the CSS/Newman Settlement Agreements, he may lack legal advice but he intends to bring new evidence, and he loves America.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from four people concerning that period. The declaration from Reverend [REDACTED] is inconsistent with the applicant's Form I-687 application and does not conform to regulatory standards. The declaration from [REDACTED] and the affidavit from [REDACTED] lack sufficient detail. The declaration from [REDACTED] has limited evidentiary value because it is unclear whether the information to which [REDACTED] attests originates from first-hand knowledge. Lastly, the applicant's Form I-687 does not include information regarding the applicant's addresses in the United States prior to 1982. Considering the limitations of the other evidence, the declaration from [REDACTED] is insufficient to establish that the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed 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 contradictions between the applicant's Form I-687 and the attestations he provided, the applicant's failure to include addresses prior to 1982 on his Form I-687, 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 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.