



U.S. Citizenship
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FILE: [REDACTED]
MSC 04 260 10078

Office: NEW YORK

Date: JAN 29 2008

IN RE: Applicant: [REDACTED]

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, on June 16, 2004. 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 provided several affidavits with limited probative value, and no other documentary evidence to establish that he had resided in the United States for the requisite periods. 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 submits one new affidavit and states that he does not have documentation such as a lease, a bank account, or an identification card to establish his residence in the United States during the requisite 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 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 application period from May 8, 1987 to May 7, 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 16, 2004. 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 that he resided at [REDACTED] from 1981 to 1983, and at [REDACTED], New York, New York from 1983 to 1989. At part #31 of the applicant's Form I-687 where he was asked to provide the names of all churches of which he is a member, he indicated nothing. At part #33 of the applicant's Form I-687, where he was asked to list the details of all employment in the United States since he first entered, he stated that was self-employed as a "peddler" in New York, New York from 1981 to 1985, and later worked as a packer for Brunswick International in Long Island, New York from 1985 to 1990.

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).

In support of his application, the applicant provided a copy of his birth certificate, as well as copies of Senegalese national identity documents for five individuals, accompanied by the following explanation: "Please find enclosed the copies of witnesses identity documents who have participated to the preparation of my trip to the US in 1981, and or have heard about it through other family members." The applicant did not submit witness testimony from the individuals whose identity documents were attached. The applicant's statement that these individuals are directly or indirectly aware that he came to the United States in 1981, by itself, has no probative value. As is stated above, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on March 2, 2006. At the time of his interview, he submitted a form-letter "affidavit of witness" from [REDACTED] who stated that he currently resides at [REDACTED] in New York, New York. Where asked to indicate where and when he met the applicant, Mr. [REDACTED] stated: "He is my cousin." Mr. [REDACTED] stated that the applicant was 16 or 17 years old when he arrived from Senegal and that he "stayed in my apartment located in the same address." He stated that the applicant later moved to [REDACTED] in Briarwood, New York. Mr. [REDACTED] attested to the applicant's good character and referred to him as a friend. He provided a copy of his Mississippi driver's license as proof of his identity. Here, Mr. [REDACTED] did not identify any specific or even approximate dates with respect to his relationship with the applicant and therefore his statement has little probative value for purposes of corroborating the applicant's claims regarding his continuous residence in the United States since 1981. Although he states that the applicant lived with him, he does not specify the address for the apartment they shared or indicate when the applicant moved. It is possible that Mr. [REDACTED] reference to "in the same address" was meant to convey that the applicant resided with him at his current address at [REDACTED] however, the applicant does not claim to have lived at this address. Given his claim that the applicant is his cousin, former roommate, close friend, and almost like a brother to him, Mr. [REDACTED] statement is significantly lacking in detail regarding the events and circumstances of the applicant's residence in the United States that would credibility to the claimed relationship.

The director issued a Notice of Intent to Deny (NOID) the application on March 3, 2006. The director noted that the affidavit from [REDACTED] did not include any proof that the affiant was present in the United States during the statutory period or proof that he had direct personal knowledge of the events being attested. The director further noted that the affidavit was not corroborated by any other evidence in the record. The applicant was given 30 days to submit additional evidence in support of his application.

In response, the applicant submitted one additional form-letter affidavit of witness from [REDACTED] a resident of Brooklyn, New York. He states that he met the applicant in December 1981, and that the applicant was a street vendor at that time. Mr. [REDACTED] states the he and the applicant became good friends and maintain contact. Finally, he states that, to his personal knowledge, the applicant resided in Bronx, New York from 1981 to 1983, and in Manhattan from 1994 to the present. It is noted that Mr. [REDACTED] does not state with any specificity where he first met the applicant, how he dates his acquaintance with him, or how frequently he had contact with him during the requisite period. Mr. [REDACTED] did not indicate that he had knowledge of the applicant's residence in the United States between 1983 and 1994. The lack of detail regarding the events and circumstances of the applicant's residence is significant given Mr. [REDACTED] claim to have a friendship with the applicant spanning 24 years. The affidavit can be given very limited weight in establishing the applicant's residence in the United States from 1981 to 1983.

The director denied the application on May 1, 2006. In denying the application, the director acknowledged the submission of Mr. [REDACTED] affidavit, but noted that attempts to contact him at the telephone number provided were unsuccessful. The director observed that neither affidavit submitted by the applicant was sufficiently credible or amenable to verification. The director further emphasized that the applicant had failed to submit any evidence or credible documentation to demonstrate his continuous residence in the United States during the relevant timeframe.

On appeal, the applicant states that as an illegal alien, he does not have any documentary evidence of his residence in the United States. He submits one additional affidavit from [REDACTED] who states that he met the applicant in 1981, when the applicant was a vendor at "[REDACTED]" in Harlem, New York. He states that he often bought goods from him, and also attended religious services with him at "the mosque on [REDACTED]" from "time to time." Mr. [REDACTED] states that he has personal knowledge of the applicant's residences from 1981 to the present time and lists the addresses that were provided on the applicant's Form I-687. Finally, he states that the longest period of time during which he has not seen the applicant was three years and three months, but he does not state when his period was.

It is noted that Mr. [REDACTED] statement that he attended religious services with the applicant at a particular mosque is inconsistent with the applicant's own testimony that he has not belonged to a church or other religious organization since arriving in the United States. While he has provided proof of his identity, there is no evidence that Mr. [REDACTED] was residing in the United States during the requisite period. He does not indicate how he dates his acquaintance with the applicant, identify how frequently or under what circumstances he saw him during the requisite period, or provide any details of the events and circumstances of the applicant's residence that would lend credibility to his claim of a bona fide relationship with the applicant spanning 25 years. Overall the statement is too vague to be given substantial probative value, and its evidentiary weight is further diminished by the inconsistencies between the applicant's statements and Mr. [REDACTED] testimony. The applicant has not submitted evidence on appeal to overcome the deficiencies discussed above and in the director's decision.

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). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three (3) affiants concerning that period, none of which is sufficiently credible or probative, based on the discussion above. An application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. Here, the affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent 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 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--*, *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.