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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: NEW YORK

Date:

JUL 11 2008

MSC 04 307 10369

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 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. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, the applicant submitted additional evidence and asserted that the evidence in the record demonstrates his eligibility.

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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.

On the Form I-687 application the applicant stated, at item 33, that from 1981 to 1988 he was self-employed as a vendor. He further stated, at item 30, that he lived (1) at [REDACTED] in New York City, from 1981 to 1985, and (2) at [REDACTED], also in New York City, from 1986 to 1992.

At item 32, the applicant was required to list all absences from the United States since January 1, 1982. The applicant listed no absences during that period. At item 16, the applicant indicated that he last came to the United States during December 1993. This office notes that those two statements are difficult to reconcile.

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The pertinent evidence in the record is described below.

- The record contains a letter dated July 15, 2005 from [REDACTED]. Mr. [REDACTED] stated that he met the applicant in New York in 1981. Mr. [REDACTED] did not indicate whether the applicant lived in New York at that time or whether he continued to live in New York for any period. Mr. [REDACTED] did not state the nature and frequency of any further encounters he had with the applicant. That letter is accorded moderate evidentiary weight for the proposition that the applicant was in New York at some time during 1981, but no weight for the proposition that the applicant continuously resided in the United States during the period of requisite residence.

- The record contains another letter from [REDACTED]. In this letter, dated August 31, 2006, [REDACTED] stated that he met the applicant in New York during 1981. [REDACTED] did not indicate whether the applicant lived in New York at that time or whether he continued to live in New York for any period. [REDACTED] did not state the nature and frequency of any further encounters he had with the applicant. That letter is accorded moderate evidentiary weight for the proposition that the applicant was in New York at some time during 1981, but no weight for the proposition that the applicant continuously resided in the United States during the period of requisite residence.
- The record contains an affidavit dated August 22, 2006 from [REDACTED]. Mr. [REDACTED] stated as follows: "I have known [the applicant] in or around December 1981 in New York. I can bear witness that she [sic] has resided in the US through May 1988." This office notes that the applicant is a man and that his appearance is not sexually ambiguous. Further, [REDACTED] did not state the basis for his statement that the applicant lived in the United States from December 1981 through May 1988. Mr. [REDACTED] provided no detail pertinent to the nature and frequency of his encounters with the applicant, if any, after December 1981. That letter is accorded moderate evidentiary weight for the proposition that the applicant was in New York at some time during 1981, but no weight for the proposition that the applicant continuously resided in the United States during the period of requisite residence.

The record contains a letter dated August 30, 2006 from [REDACTED]. That letter states that [REDACTED] has known the applicant since 1981, when they met in New York through a friend. Mr. [REDACTED] did not indicate whether the applicant lived in New York at that time or whether he continued to live in New York for any period. Mr. [REDACTED] did not state the nature and frequency of any further encounters he had with the applicant. That letter is accorded moderate evidentiary weight for the proposition that the applicant was in New York at some time during 1981, but no weight for the proposition that the applicant continuously resided in the United States during the period of requisite residence.

- The record contains a letter dated September 15, 2005 from [REDACTED]. Mr. [REDACTED] stated that he met the applicant in 1981 in New York City and that, "Over the years [the applicant] has been a presence with family and friends." Mr. [REDACTED] provided no additional detail about the nature and frequency of his encounters with the applicant. That letter is accorded moderate evidentiary weight for the proposition that the applicant was in New York at some time during 1981, but no weight for the proposition that the applicant continuously resided in the United States during the period of requisite residence.
- The record contains a sworn statement, dated July 19, 2005, that the applicant signed, under oath, before a CIS officer and another witness. The applicant made the following statement:

That my name is [REDACTED]. My date of birth is October 15, 1956. I was born in Dakar, Senegal. I attended school in Senegal from age 7 until age 24. After that I worked as a teacher in Senegal for 13 years. Then I came to the

United States. I took a plane from Senegal to Canada and then I took a car to New York City. I lived at the Hotel 50th until 1985 or 1986.

This office notes that, if the applicant were born during 1956, attended school from age seven through age 24, and then worked as a teacher in Senegal for 13 years before coming to the United States, he could not have come to the United States prior to 1993.

- The record contains an undated letter from the applicant that CIS received on September 20, 2005. In that letter the applicant stated that he erroneously asserted that he worked as a schoolteacher for 13 years, and that he had, instead, held that position for 13 months.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the Form I-687 application, the applicant provided no evidence pertinent to his claim of continuous residence in the United States during the requisite period.

In a Notice of Intent to Deny (NOID), dated August 19, 2005, the director stated that the applicant failed to submit evidence demonstrating his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director also noted the discrepancy between the applicant's birth date being October 15, 1956, his claiming to have taught school for 13 years in Senegal after reaching age 24 and his claim of having entered the United States before January 1, 1982, and having subsequently continuously resided there. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the July 15, 2005 letter from [REDACTED], the September 15, 2005 letter from [REDACTED], and his own undated letter, all of which are described above.

In the Notice of Decision, dated August 8, 2006, the director denied the application based on the reasons stated in the NOID. The director also noted that, pursuant to *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988), the applicant is obliged to reconcile the discrepancy between his claim of entering the United States during 1981 with independent objective evidence, rather than with a feasible explanation.

On appeal, the applicant submitted the August 22, 2005 affidavit from [REDACTED], the August 30, 2006 letter from [REDACTED], and the August 31, 2006 letter from [REDACTED], all of which are described above.

The applicant stated,

I am hereby submitting the requested evidence on my 3 affiants including their phone numbers and copies of their IDs. In the light of their irrefutable and tangible material evidence, I urge you to reinstate my case.

With that appeal the applicant provided the phone numbers of [REDACTED] and [REDACTED] and photocopies of their New York drivers' licenses.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

The applicant has provided affidavits that, taken together, are persuasive evidence that the applicant was in New York at some time during 1981. This office accepts that proposition as sufficiently demonstrated. As such, this office accepts the applicant's assertion that, perhaps due to a language barrier, he incorrectly stated that he taught school in Senegal for 13 years, rather than 13 months.

The applicant has submitted insufficient evidence, however, to show that he resided in the United States continuously during the period of requisite residence. Only [REDACTED] August 22, 2006 letter avers that the applicant was in the United States during the entire period. Mr. [REDACTED] letter, however, did not indicate the basis for Mr. [REDACTED]'s asserted knowledge of the applicant's continuous residence in the United States, and, further, was mistaken about the applicant's gender.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 paucity of credible supporting documentation he has failed to meet his burden of proof and 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.