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[REDACTED]

FILE: [REDACTED]  
MSC-05-145-10870

Office: NEW YORK

Date: JUL 23 2008

IN RE: Applicant: [REDACTED]

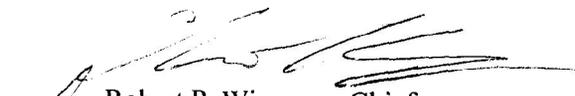
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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 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. Specifically, the director stated that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on November 10, 2005, the applicant stated that the first time he entered the United States was on October 23, 1990. The director stated that this indicated that the applicant was ineligible to adjust to temporary resident status. The director granted the applicant 30 days within which to submit additional evidence in support of his application. The director stated that the applicant failed to submit additional evidence for consideration in response to her NOID. Therefore, the director found the applicant failed to overcome her reasons for denial of his application.

On appeal, the applicant asserts that he is appealing the director's decision because her assertion that he testified that the first time he entered the United States was on October 23, 1990 is not accurate. He asserts that the director did not consider the affidavit he previously submitted from [REDACTED] when she made her 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) 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on February 22, 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 showed his address in the United States during the requisite period to be [REDACTED] in Bronx, New York from 1981 to 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. Here, he showed his first and only absence from the United States to have been from August 1990 until October 1990 when he went to Guinea for a family visit. At part #33, where the applicant was asked to list all of his employment in the

United States since he first entered, he showed that he was self-employed as a vendor in New York from 1980 until the date he submitted his Form I-687. It is noted that though the applicant indicated his work as a vendor in the United States began in 1980, he did not indicate that he had an address of residence in the United States until 1981.

Also in the record is a sworn statement taken from the applicant on November 10, 2005. In this sworn statement, the applicant asserts that he entered the United States with a visa on October 23, 1990. It is noted that applicant did not state whether this was his first entry.

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).

Evidence in the record that is relevant to the applicant's claim that he resided in the United States for the duration of the requisite period is as follows:

- A photocopy of a passport bearing number 00071 that indicates it was issued to the applicant on January 22, 1988 in Monrovia, Liberia. This indicates that the applicant was in Liberia rather than the United States in January 1988. This casts doubt on the applicant's assertion on his Form I-687 that his only absence from the United States was from August to October 1990. This passport also indicates that the applicant has traveled extensively outside of the United States from 1988 to 1990. Though not all of the stamps on this photocopy of this passport are legible, it clearly shows that the applicant was in: Abidjan, Ivory Coast on August 30, 1988; that he arrived in Conakry, Guinea on December 14, 1988 and February 6, 1989; that he obtained visas to enter the United States on March 21, 1989, June 6, 1989, October 19, 1989 from the United States Consulate in Monrovia, Liberia; and that he was in The Gambia on July 12, 1990, August 16, 1990, and August 31, 1990. This passport carries no weight in establishing that the applicant resided in the United States during the requisite period. However, it does cast doubt on whether the applicant has accurately represented all of his absences from the United States.
- A second document that appears to be a passport bearing number [REDACTED] that shows it was issued in Monrovia, Liberia on February 4, 1981. Page 6 of this document indicates it was also renewed on July 10, 1986 and July 10, 1987.

- An affidavit from [REDACTED] that was notarized on November 9, 2005. The affiant states that he knows that the applicant has resided in the United States in New York from August 1990 to the date he submitted his affidavit. Because this affidavit does not state that the affiant knows that the applicant resided in the United States during the requisite period, it carries no weight as evidence that he did so.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 16, 2005. In her NOID, the director asserted that at the time of his interview with a CIS officer pursuant to his Form I-687 application on November 10, 2005, the applicant both stated under oath and submitted a sworn statement in which he stated that the first time he entered the United States was on October 23, 1990. Therefore, the director found the applicant was not eligible to adjust status to that of a temporary resident. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The director denied the application for temporary residence on February 2, 2006. In denying the application, the director stated that the applicant failed to submit additional evidence for consideration in response to her NOID. Therefore, he did not overcome her reasons for denial as stated in her NOID.

On appeal, the applicant asserts that the director's assertion that he testified that the first time he entered the United States was on October 23, 1990 is not accurate. He alleges that he testified that October 23, 1990 was the last time he entered the United States. He asserts that the director did not consider the affidavit he previously submitted from [REDACTED] when she made her decision. He states that additional time is needed to submit additional evidence.

The AAO notes that the applicant's appeal was received on April 11, 2006. The AAO contacted the applicant's attorney on April 28, 2008 to provide him with the opportunity to provide a brief or additional evidence. However, to date, no additional evidence has been received from this applicant.

The AAO further notes that the sworn statement in the record does not clearly indicate whether the applicant testified that October 23, 1990 was the first time he entered the United States.

However, the AAO finds that the director denied the application after finding that the applicant failed to meet his burden of proof as defined in the regulation at 8 C.F.R. § 245a.2(d)(5). In pertinent part, this regulation states that applicants bear the burden of establishing by a preponderance of the evidence that they are eligible to adjust status to that of a temporary resident. As was previously noted, the regulation at 8 C.F.R. § 245a.2(d)(6) specifies that to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. Here, the applicant has failed to provide evidence of eligibility apart from his own testimony. Therefore, he has failed to meet his burden of proof.

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 existence of evidence in his passport that he was absent from the United States multiple times in 1988, 1989 and 1990 when he claims only to have been absent from the United States from August to October of 1990, 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 any relevant 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.