



U.S. Citizenship
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FILE: [REDACTED] Office: MEMPHIS
MSC-06-007-11210

Date: JUN 04 2008

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Memphis, and that 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. The director noted facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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 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).

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. 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 October 7, 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 "[redacted]" in Brooklyn, New York from July 1980 to October 1998. In Part #33, the applicant did not list any employers during the relevant period and did not list any information at Part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

It is also noted that, on Part #32 of the legalization application, applicants were asked to list all departures from the United States since entry. The applicant indicated that his only departure was in 1998.

This fact detracts from the legitimacy of the applicant's answer to question #1 on the Form I-687 supplement, SCC/Newman LULAC class membership worksheet. In this question, the applicant

indicated that he visited an office of INS or a qualified designated entity and that he was turned away from filing the legalization application because he was found to have traveled outside the United States either after November 6, 1986 without advance parole or he had traveled outside the United States and returned after January 1, 1982 with a visa or travel document. Thus, the applicant's claims of being turned away for traveling during the statutory periods are weakened by his admissions that he did not travel outside the United States until 1998. In the Notice of Denial the director noted this fact. He then went on to adjudicate the case on its merits. Thus, while the class membership of the applicant was questioned in the decision, the director treated the applicant like a class member and based his decision on the applicant's failure to establish continuous residency for the requisite period, not failure to establish class membership.

The record also contains a Form I-589 Request for Asylum that the applicant filed in the United States with the Service on December 8, 2000. On the Form I-589 Request for Asylum, the applicant specifically stated in Part A that he resided at Quartier Badala in Conakry, Guinea from 1965 until October 2000. He also indicated that he resided in Mali from January 2000 until September 2000, and that he was self-employed as a merchant in Conakry marketplace from 1980 until January 2000. As a supplement to his I-589 asylum application, the applicant submitted a sworn personal statement. In this statement, the applicant wrote, "I was born in Conakry, Guinea . . . I went to Coranic school as a child and learnt to say my prayers. When I was about fourteen years old, I started taking French classes . . . from a very young age, I helped my father operate a small clothing store in the Conakry market. After two years I managed to save some money and rented a small store in the same market and started selling shoes and clothing. I got married in 1990 and my daughter was born in 1995." It is noted that the applicant was ordered removed on November 12, 2001.

In addition to the applicant's own statements, in support of his asylum application, the applicant submitted a letter signed by [REDACTED]. In this letter, [REDACTED] recounted how, on September 13, 2000, he went to the airport in New York City to pick up a friend who was arriving from Mali. [REDACTED] wrote that, with his friend at the airport was, "a gentleman named Baba Toure who are Guinea citizen . . . since he was African like us and he don't know nobody we took him with us at this address [REDACTED]. Jamaica, New York. I offered him to stay with me . . . we find some Guinea. After a couple day I hear talk about some Guinean in Memphis, Tennessee. I give him bus ticket and little bit of money. After he arrived in Memphis he call me to lets me know he find lot of Guinean." This letter is also contradictory to the applicant's testimony under oath and in writing that he came to the United States in July 1980 and remained in the United States continuously for the duration of the statutory period.

This statement, along with the rest of the I-589 application conflict with the information that the applicant provided on his legalization application. In that application he indicated that he entered the United States in July 1980 and left only once subsequent to his initial entry, in 1998. Thus, the applicant has admitted that he resided in Guinea until January 2000, and his testimony relating to his asylum application seriously impairs the credibility of the applicant's statements that he entered the United States in July 1980 and that he resided continuously in the United States during the requisite period. These statements also impair the credibility of any documentation submitted in support of that claim. It is incumbent upon the applicant to resolve any inconsistencies in the record by

independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has not provided any explanation regarding the inconsistent information provided on his asylum application.

In light of the inconsistencies sighted above, the record reveals that the applicant initially submitted the following additional evidence:

- A letter from [REDACTED] who indicated that he resided at [REDACTED] New York, New York. The declarant indicated that he first met the applicant in 1983 through a mutual acquaintance. He did not indicate that he has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. He offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period, nor did he provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. Given the lack of detail in this letter, and that fact that it directly conflicts with the information provided by the applicant in his asylum application, it will be given minimal weight.

Accordingly, the director denied the application on September 18, 2006 noting that the applicant had not submitted sufficient evidence to establish his claims for the eligibility sought.

On appeal, the applicant did not address the inconsistencies in the record. He submitted one additional piece of evidence, a notarized letter from a close family friend, [REDACTED]. The declarant wrote that he traveled to the United States with the applicant on July 10, 1980 via JFK airport in New York City and that he lived with the applicant at [REDACTED] in Brooklyn, New York from 1980 until 1998.

As stated above, it is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has offered no explanation or corroborating evidence to overcome his own inconsistent statements regarding his residency in the United States during the statutory period. The above letter does verify the applicant's claims on his legalization application, however, it does not explain the differing information that the applicant provided with his asylum application. For this reason, it will be given no weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, 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 or if the affidavits are contradictory to the applicant's own testimony in the record. This applicant has not addressed or explained the inconsistencies as

required and he has provided no contemporaneous evidence of residence in the United States relating to requisite period.

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 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 affidavits with minimal probative value, and his own inconsistent statements on his Form I-687 and his asylum application, 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.