



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-162-11926

Office: New York

Date: JUN 04 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, 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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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 makes a statement.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her 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 Supplement to Citizenship and Immigration Services (CIS) on March 11, 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 first address in the United States to be at [REDACTED] New York, New York from December 1981 to August 1989. Similarly, at part #33, he showed his first employment in the United States to be in “self-employment throughout Harlem, New York,” as a street vendor from December 1981 to August 1989.

The applicant does not state, on the appeal form, the date of first entry into the United States. According to the notice of decision dated May 16, 2006, the applicant’s I-589, Application for Asylum and for Withholding of Removal¹ dated September 22, 1997, and the applicant’s Application for Temporary Protected Status dated January 3, 2000, both applications state the applicant’s first and last entry into the United States was on October 12, 1996. According to the applicant’s Form I-687, he stated that he last came to the United States on October 12, 1996.

¹ Attached to the applicant’s I-587, Application for Asylum and for Withholding of Removal dated September 22, 1997, is a statement made by the applicant that he lived in Sierra Leon all his life until forced to flee to Guinea in early 1995 because of civil unrest and violence.

According to a undated statement made by the applicant found in the record of proceeding, the applicant stated that his first entry the United States was in December of 1981 from Canada.

The applicant references envelopes presumably containing personal correspondence sent through the mails addressed to the applicant in New York to support his contention that he was present within the United States during the requisite period. All of the six airmail envelopes submitted were addressed to the applicant at [REDACTED] New York, New York. The earliest envelope's date according to its postal cancellation markings is 1982. That mailing was reputedly sent in 1982 to the applicant in New York by Ibrahim Kaba of the Republic of Guinea. The envelope has pasted upon it a postage stamp reputedly cancelled in 1982 issued by the Republique de Guinee stating a valuation of 250 F. On its face, the postage stamp is a commemorative stamp of the Games of the XXV Olympiad that were held between July 25, 1992 and August 9, 1992.² As noted on the stamp, the games were held in Barcelone (Barcelona), Spain. Since the stamp commemorates an event held ten years after the stamp's reputed cancellation date in 1982, the submission of this envelope to correlate the applicant's statements of residency in the United States in 1982 is a fraudulent act by the applicant.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant submitted the following relevant documentation:

- A declaration from [REDACTED] of the Bronx, New York made March 23, 2006, who stated that he knew the applicant as a street vendor working on 125 St. and 7th Avenue, New York, New York, from about 1982 to the present.
- An undated declaration from [REDACTED] of New York, New York, that he met the applicant about 27 years ago on December 3, 1981, and became his roommate until August 7, 1989.

No evidence such as rent receipts, a contemporaneous lease, utility bills, tax receipts, U.S. mail directed to the applicant at the New York, address, pay statements, tax records, or employment references, was introduced by the applicant to substantiate the applicant's residency during the requisite period.

The director denied the application for temporary residence on July 22, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

² See http://en.wikipedia.org/wiki/1992/1992_Summer_Olympics.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1983 or of entry to the United States before January 1, 1982 except for his own admittedly inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted. Although the applicant has provided proof of residence in the United States after the requisite period, such proof does not cover the entire requisite period.

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 inconsistencies and contradictions noted in the record, 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 credible 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.