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MSC-05-158-10004

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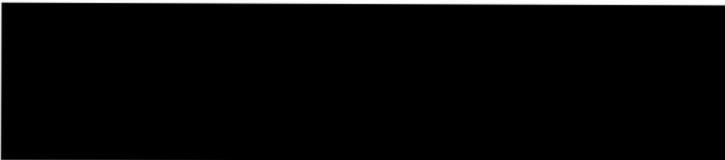
Applicant:



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:



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 Records 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, Philadelphia District Office. 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 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 under this section. As a result, the director denied the application. It is noted that the director raised the issue of class membership. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant explained that affidavits alone are sufficient evidence to establish eligibility for temporary resident status.

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).

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 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 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 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 no addresses or geographic regions where he resided during the requisite period. The applicant’s failure to provide this information when requested casts significant doubt on his claim to have resided continuously in the United States during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant stated, “N/A.”

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations, including an affidavit from himself. In his affidavit dated August 5, 2006, the applicant stated that he first came to the United States in November 1981 with his parents at the age of twelve. The applicant lived with a family friend, Mrs. [REDACTED], at an address in Adelphi, Maryland, before moving to New York and then to Delaware. After two years, the applicant’s parents returned to Cameroon and the applicant continued living in the United States. It is noted that the applicant again failed to provide the addresses where he resided in the United States, except for the address where he first resided with [REDACTED] in Maryland. The applicant also failed to provide the dates during which he resided in New York and

Delaware. The applicant's continued failure to provide any significant detail regarding his time in the United States, including specifics regarding his addresses or the cities in which he lived, as well as his activities during the requisite period, casts further doubt on his claim to have resided in the United States throughout the requisite period.

The applicant provided a notarized declaration from [REDACTED], which states that the declarant has known the applicant since 1983. The declarant met the applicant when he moved into the building where she lives. The applicant was her neighbor. The declaration lists a current address for the declarant located in the Bronx, New York. This declaration fails to confirm that the applicant resided in the United States at any time other than during 1983. In addition, the declaration lacks detail regarding the dates during which the applicant resided near the declarant, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. Therefore, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED]. This affidavit states that the applicant is the affiant's cousin, and the affiant accompanied the applicant to the airport with his parents when they departed for the United States in 1981. Two years later, the affiant came to the United States. At that time, the applicant's parents decided to return home. The applicant stayed with the affiant at that time, before he moved to New York and then to Delaware. The applicant has done manual labor for several people while in the United States, since he cannot have a job. This information is inconsistent with the applicant's affidavit, where the applicant did not indicate that he lived with [REDACTED] prior to moving to New York. In addition, this information is inconsistent with the Form I-687, where the applicant failed to indicate that he had done manual labor when asked to list all employment in the United States. These inconsistencies cast doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant also submitted an affidavit from his parents, [REDACTED] and [REDACTED]. The affidavit states that the applicant's parents took him to the United States in November 1981 and stayed with him for two years, until they returned to Cameroon. The affiants stated that, while in the United States, they lived with a family friend named [REDACTED] at the address in Maryland specified in the applicant's affidavit. The affiants stated that the applicant came back to Cameroon in 1992 and returned to the United States in 1998. This affidavit fails to provide details regarding the regions where the applicant lived after his parents left the United States, their frequency of contact with him, and, considering that the applicant was approximately 14 years old, who cared for him when his parents returned to the United States. Therefore, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED], who stated that she has known the applicant since his birth in Cameroon. The affiant stated that the applicant came to the United States with his parents in November 1981 and she picked them up from the airport. The applicant and his parents lived with her at the Maryland address specified in the affidavits of the applicant and

his parents. The affiant stated that the applicant's parents moved back to Cameroon two years later, the applicant remained in the United States, and then he moved to Delaware. The applicant returned to Cameroon in 1992 and came back to the United States in 1998. This information is inconsistent with the affidavit from the applicant, in that it fails to mention that the applicant moved to New York before he moved to Delaware. This inconsistency casts some doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, this affidavit lacks detail regarding the dates during which the applicant resided with the affiant, their frequency of contact, and how the affiant is aware of the applicant's residence in the United States when he was not residing with the affiant. Therefore, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had not established by a preponderance of the evidence that he had 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 under this section.

On appeal, counsel for the applicant explained that affidavits alone are sufficient evidence to establish eligibility for temporary resident status.

In summary, the applicant has submitted attestations that lack sufficient detail or are inconsistent with the Form I-687 and the applicant's affidavit. The absence of sufficiently detailed supporting 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 contradictions between the applicant's Form I-687 and affidavit and the other attestations he submitted, and given his 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 for the requisite period 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.