

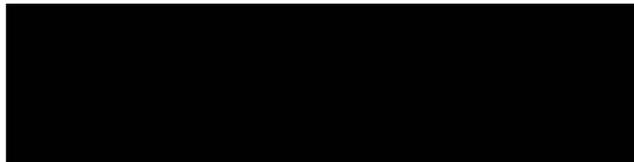
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 264 10708

Office: NEW YORK

Date:

MAR 10 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, 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.¹

On appeal, counsel asserted that the director failed to adequately consider all of the evidence. More specifically, counsel stated that the district director had failed to accord adequate weight to the acquaintance affidavits submitted. Counsel submitted no additional argument or evidence with the appeal.

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).

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.

¹ The decision of denial refers, for the basis of the decision, to the NOID issued in this matter on April 15, 2006. The NOID implies, by citing pertinent regulations, that the applicant’s continuous physical presence in the United States as required by section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3), in addition to his continuous unlawful residence as required by section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2), may be at issue in this case. This office finds that the implication, rather than direct statement, that the applicant may not have satisfied the requirements of 245A(a)(3) of the Act was insufficient to accord the applicant adequate notice of that basis for denial, as required by 8 C.F.R. § 245a.2(o). This office, therefore, will treat the decision as having denied the application pursuant to section 245A(a)(2) of the Act, but not pursuant to section 245A(a)(3).

Further, the NOID indicated that the applicant’s CSS/Newman class membership is questionable. Because the district director then issued a decision on the merits, however, this office finds that the application was not denied on that basis, and will treat the decision as a denial on the single issue of the applicant’s alleged failure to demonstrate continuous unlawful residence in the United States as required by section 245A(a)(2) of the Act. The issue of class membership will not, therefore, be addressed further.

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, "[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.

The record contains:

- the naturalization certificate of [REDACTED] and a form affidavit, dated December 14, 2005, from him,
- the naturalization certificate of [REDACTED] and a form affidavit, dated December 15, 2005, from him,

and

- photocopied portions of the applicant's Ghanaian passport.

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

In their December 14, 2005 and December 15, 2005 form affidavits [REDACTED] and [REDACTED] stated that they are friends of the applicant,² and attest to the applicant's residence in the Bronx at three different addresses from September 1981 to the dates of those affidavits.

In a Notice of Intent to Deny (NOID), dated April 15, 2006, the director noted that, in support of his claim of continuous residence in the United States the applicant had produced only two affidavits, without any evidence to corroborate that the affiants have direct personal knowledge of the applicant's entry into, and continuous residence, in the United States. The director granted the applicant thirty days to submit additional evidence. The director also noted that, although the applicant stated, at his March 22, 2006 interview, that he tried to apply for amnesty during January 1988, he stated on the Form I-687, which he executed on April 9, 2005, at item 14, that he had never previously applied for amnesty.³

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).

In response counsel submitted the photocopied portions of the applicant's passport.

On his Form I-687 application the applicant indicated, at item 32, that his last absence from the United States was from July 1987 to August 1987. The application further indicated, at item 16, that he last entered the United States on August 28, 1987. At his March 22, 2006 interview, the applicant indicated that he last entered the United States on August 29, 1987.

Visa stamps on the applicant's passport appear to indicate, however, that he traveled from Ghana to the Ivory Coast on June 26, 1999. Again, this discrepancy weakens the credibility of the applicant's assertions and evidence. Again, inconsistencies may lead to a reevaluation of the reliability and sufficiency of the evidence submitted unless they are resolved with independent, objective evidence

In the Notice of Decision, dated July 27, 2006, the director denied the application based on the applicant's failure to demonstrate continuous residence in the United States beginning before January 1, 1982.

² At his March 22, 2006 interview the applicant identified [REDACTED] as a distant cousin.

³ This office does not cite this discrepancy to challenge the applicant's class membership. Today's decision does not rely upon the applicant's possible lack of class membership as a basis, even in part. This office cites that discrepancy as an indication that the reliability of the information and evidence submitted in support of the instant application is questionable.

On appeal, counsel stated that the affidavits submitted should be accorded more consideration, but submitted no additional evidence or argument.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since January 1, 1982.

The record contains no contemporaneous evidence to demonstrate that the applicant was in the United States at any time during the salient period, from January 1, 1982 through December 31, 1987, let alone that he resided in the United States continuously during that period. Although the applicant claims to have been employed during the salient period, he provided no evidence from employers of his residence in the United States from 1982 to 1987. The sole evidence upon which the application relies to support that proposition consists of two acquaintance affidavits.

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 application in the instant case relies upon documents with minimal probative value. The probative value of that evidence is further weakened by the fact that the applicant and counsel have failed to address the contradictions between the applicant's evidence and the assertions he has made in support of the instant application.

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 the applicant 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.