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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-349-10643

Office: NEW YORK

Date: MAR 26 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:



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.

A handwritten signature in black ink, appearing to read "R. 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. 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. 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, counsel for the applicant asserts that the applicant submitted three affidavits as corroborating evidence of his residence in the United States during the requisite period.

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 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 September 14, 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 in Bronx, New York from April 1986 until November 1992. Similarly, at part #33, he showed his first employment in the United States as a self-employed vendor from May 1986 until present. The applicant failed to provide any information on the location of this employment.

The applicant’s Form I-687 application indicates that he has resided in the United States since April 1986. The eligibility requirement for temporary resident status is that an applicant must establish that he entered the United States before January 1, 1982. *See* Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant has failed to provide any information on his Form I-687 application to establish his continuous unlawful residence in the United States since prior to January 1, 1982.

In an attempt to establish continuous unlawful residence during the requisite period, the applicant submitted the following documents:

The applicant submitted his own affidavit, dated December 12, 2005, detailing his continuous residence in the United States. The applicant claims that he unlawfully entered the United States on April 3, 1981 and resided at [REDACTED] Bronx, New York from April 4, 1981 until November 30, 1992. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. Without credible and probative corroborating evidence to support the applicant's claims, his testimony alone does not satisfy his burden of proof. Moreover, the applicant's claims are inconsistent with his Form I-687 application. The applicant provided on this application that he first resided in Bronx, New York from April 1986 until November 1992.

The applicant submitted a fill-in-the-blank affidavit from [REDACTED] dated December 9, 2005. [REDACTED] provides, [REDACTED] have [sic] been my good friend since our childhood in Ghana. [REDACTED] pick me up at the airport JFK in 1987 on my arrival to the USA and we were together until 1999, he went to Ghana and came back in 2003." [REDACTED] states in his affidavit that he has resided in the United States since 1987. Therefore, he does not have personal knowledge of the applicant's residence in the United States during the entire requisite period. Moreover, [REDACTED] has not provided any details on his contact with the applicant subsequent to their meeting in 1987. [REDACTED] states that "we were together until 1999," however he has not elaborated on this statement. [REDACTED]'s affidavit would have carried more weight had he provided detailed information on the type and frequency of his contact with the applicant. Although not required, [REDACTED]'s affidavit would have also carried more weight if he had provided a copy of his identity document and a phone number to verify his statements. Therefore, this affidavit can only be afforded minimal weight as probative evidence.

The applicant submitted a fill-in-the-blank affidavit from [REDACTED] dated December 9, 2005. This affidavit contains the same deficiencies found in [REDACTED]'s affidavit. Mr. [REDACTED] provides, [REDACTED] was my classmate in school in 1986 in Ghana. He left to the U.S.A. in 1981. We were communicating together until April 1986, I joined him in the U.S. After few years stay, he left for home-Ghana. He return [sic] to U.S. again [sic] October 2003." Mr. [REDACTED] states in his affidavit that he has resided in the United States since April 1986. Therefore, he does not have personal knowledge of the applicant's residence in the United States during the entire requisite period. Moreover, [REDACTED] has not provided any details on his contact with the applicant subsequent to their meeting in April 1986. [REDACTED]'s affidavit would have carried more weight had he provided detailed information on the type and frequency of his contact with the applicant. Although not required, [REDACTED]'s affidavit would have also carried more weight if he had provided a copy of his identity document and a phone number to verify his statements. Therefore, this affidavit can only be afforded minimal weight as probative evidence.

The applicant submitted a fill-in-the-blank affidavit from [REDACTED], dated December 9, 2005. [REDACTED] provides, "[REDACTED] is my friend, we grew-up together in same City Kumasi-Ghana, he traveled to United States in 1981 before I also came to America in Feb 1981.

He went to Ghana and came back on October 2003.” [REDACTED] has not provided any details on his contact with the applicant during the requisite period. Relevant details would include the frequency and type of contact [REDACTED] had with the applicant. [REDACTED] affidavit would have carried more weight had he provided this detailed information. Although not required, Mr. [REDACTED] affidavit would have also carried more weight if he had provided a copy of his identity document and a phone number to verify his statements. Therefore, this affidavit can only be afforded minimal weight as probative evidence.

The director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant did not submit documentation to support his claim of entry into the United States from Canada in April 1981. The director further determined that the affidavits the applicant submitted are neither credible nor amenable to verification. The director concluded that the applicant failed to meet his burden of proof to establish his eligibility for temporary resident status.

In response to the NOID, counsel for the applicant submitted a letter from [REDACTED] M.D., dated June 5, 2006. This letter provides, “[REDACTED] has been a patient at Okyeniba Clinic since 09/04/86. On 09/04/86 he was treated for high blood pressure . . . Patient was lost for follow up for some years and he was again seen on 08/23/05.” Attached to this letter are medical notes presumably from the applicant’s medical record. These notes are dated September 4, 1986, February 6, 1988, March 6, 1996, August 23, 2005, February 13, 2006 and February 16, 2006. This letter is probative evidence of the applicant’s residence in the United States on those dates.

In denying the application, the director noted that the applicant submitted a letter from his attending physician, which shows that he has been a patient at Okyeniba clinic since September 4, 1986. The director determined that this letter does not overcome the basis for the NOID.

On appeal, counsel for the applicant resubmits the applicant’s previously submitted evidence. Counsel asserts that the applicant has submitted three affidavits which attest to his residence in the United States from June 1981 through 1988. Counsel maintains that the affiants have direct personal knowledge of the applicant’s residence. Counsel notes that the applicant informed him that during his interview he testified to his residence in the United States since June 1981. Counsel asserts that the fact that the applicant has only submitted affidavits as evidence should not be the basis for denial.

The applicant has failed to provide consistent and credible documentation of his residence in the United States during the requisite period. Notably, the applicant has not established a consistent date of residence in the United States. The applicant’s Form I-687 provides that he has resided in the United States in April 1986. On appeal counsel asserts that the applicant has resided in the United States since June 1981. The applicant’s own affidavit provides that he has resided in the United States since April 3, 1981. The affidavits from [REDACTED] and [REDACTED] provide that the applicant has resided in the United States since October 1981. The [REDACTED]

affidavit from [REDACTED] provides that the applicant has resided in the United States since September 1981. Finally, the interview notes indicate that the applicant testified he has resided in the United States since April 1981. The applicant's failure to provide a consistent date of residence in the United States draws into question the veracity of his entire claim. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence in support of the application consists of three affidavits and a physician's letter. The three affidavits, as noted, lack considerable detail on the affiant's direct personal knowledge of the applicant's residence in the United States during the requisite period. The applicant has twice been given the opportunity to remedy this deficiency. However, in rebuttal to the NOID and on appeal the applicant has failed to provide any additional evidence that would bolster the credibility of the affiant's statements. The applicant submitted a credible letter from [REDACTED] M.D. attesting to the applicant's medical treatment at the Okyeniba Clinic. However, this letter is, at best, only probative evidence of the applicant's residence in the United States since September 4, 1986. Therefore, this letter alone does not establish the applicant's residence in the United States during the entire requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide credible and probative evidence to establish his continuous residence in the United States during the entire requisite period renders a finding that he has failed to satisfy his burden of proof in this proceeding.

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.