



U.S. Citizenship
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FILE:

MSC-05-200-14703

Office: NEW YORK

Date: **MAY 08 2008**

IN RE:

Applicant:

APPLICATION:

Application for Temporary Resident Status under 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.

Robert P. Wiemahn, 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, in her Notice of Intent to Deny (NOID), the director stated that the evidence the applicant submitted in support of her application, one affidavit, did not carry sufficient weight to allow the applicant to prove that she resided continuously in the United States for the duration of the requisite period. In saying this, the director noted that the affiant from whom the affidavit was submitted claimed not to have met the applicant until after January 1, 1982. The director also stated that she found that this affidavit was not credible, noting that credible affidavits include documents identifying the affiant, contain proof that the affiant was in the United States during the requisite period and contain proof that there was a relationship between the affiant and the applicant or proof that the affiant has direct personal knowledge of the events being attested. The director found the affidavit submitted by this applicant was lacking with regards to these criteria. The director granted the applicant 30 days within which to submit additional evidence in support of her application. Though the director noted that her office received evidence from the applicant in response to the NOID, she found this evidence did not overcome her reasons for denial. She went on to say that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) or the Service officer on January 26, 2006 the applicant stated that the first time she departed the United States after her initial entry was in March of 1999. She went on to say that at the time of that same interview, the applicant stated that she did not tender an application for legalization during the original filing period. She further stated that the affidavit from [REDACTED] was not submitted with identity documents or proof that the affiant was in the United States during the requisite period. Here, the director reiterated her criteria for credible affidavits. Because the applicant failed to provide sufficient evidence in support of her application, the director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

It is noted that the director alluded to the issue of class membership in the decision. 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, the applicant submits a brief in support of her application. In it, the applicant notes that she submitted an affidavit from a United States Citizen and asserts that the Service erred in

stating that the applicant claimed during her interview with a Citizenship and Immigration Services (CIS) officer that her first departure from the United States after her initial entry was in 1999. She claims that during her interview she stated that her first departure from the United States after her first entry was in 1988.

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) 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 18, 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 her addresses in the United States during the requisite period to be: [REDACTED] in New York, New York from November 1980 until May 1984; and [REDACTED] in New York, New York from June 1984 until February 1989. At part #32 where the applicant was asked to list all of her absences from the United States since she first entered, she indicated that she had no absences during the requisite period. Here, she showed her first absence from the United States to have been from March to May 1999 when she went to Ghana to visit family. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that she is self-employed. Here, she did not show a particular type of self-employment, dates of employment, wages, or a place of employment.

Also in the record are the notes from the CIS officer who interviewed the applicant on January 26, 2006. Here, the record shows the applicant stated that she never left the United States during the years 1982 to 1988. These notes indicate that the applicant stated a second time during the interview that she never received a United States Visa abroad prior to May 4, 1988 because she never left the United States.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted the following that are relevant to the requisite period in support of her application:

A letter from [REDACTED] that is notarized and is dated January 14, 2006. In this letter, the declarant states that he has known the applicant since 1982. Though the declarant states that the applicant is a nice person, he does not state when or where he first met the applicant. He does not indicate whether he met her in the United States. He further fails to indicate that he knows that she resided in the United States at any point in time before, during or after the requisite period. He does not submit proof that he himself resided in the United States during the requisite period. Because the declarant does not state that he knows the applicant resided in the United States during the requisite period, this letter carries no weight as proof that she did so.

The director issued her Notice of Intent to Deny (NOID) to the applicant on January 31, 2006. In her NOID, the director noted that the affidavit from [REDACTED] did not carry sufficient weight to allow the applicant to prove that she resided continuously in the United States for the duration of the requisite period. She noted that [REDACTED] claimed not to have met the applicant until 1982, which was not before January 1, 1982. The director also stated that this affidavit did not include documents identifying the affiant, contain proof that the affiant was in the United States during the requisite period and contain proof that there was a relationship between the affiant and the applicant or proof that the affiant has direct personal knowledge of the events being attested. Therefore, she found it was not credible. The AAO again notes that it does not contain testimony regarding the applicant's residence in the United States before, during or after the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of her application

In response to the NOID, the applicant submitted the following:

- A letter from [REDACTED] that is notarized and is dated February 16, 2006. In this letter, [REDACTED] states that she has known the applicant since 1980. Here, it is noted that [REDACTED] did not state where she met the applicant or whether she met her in Ghana, in the United States or elsewhere. She states she has known the applicant in Ghanaian community gatherings. Here, again, [REDACTED] does not state whether these gatherings were in Ghana, in the United States or elsewhere. As with the letter from [REDACTED] this letter does not state that the declarant knows that the applicant resided in the United States during the requisite period. Therefore it carries no weight in establishing that she did so.
- A color photocopy of an envelope that shows it was mailed to [REDACTED] at the address of residence that is consistent with where the applicant indicated she resided on that envelope's postmark date, which reads "11-04-1981."

- A color photocopy of an envelope sent to the applicant in New York. The postmark date on this envelope is December 27, 1984.

Though these envelopes were postmarked during the requisite period and show that two individuals mailed letters to the applicant on two dates during the requisite period, they do not establish the applicant's continuous residence in the United States during the requisite period. Further, when considered together they can be accorded only minimal weight as proof that the applicant resided in the United States in 1981 and 1984.

The director denied the application for temporary residence on June 16, 2006. In denying the application, the director stated and the record supports that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) or the Service officer on January 26, 2006 the applicant stated that the first time she departed the United States after her initial entry was in March 1999. The AAO also notes that the applicant's Form I-687 also shows that the first time the applicant left the United States since she entered was in March 1999. She further stated that the affidavit from [REDACTED] was not submitted with identity documents or proof that the affiant was in the United States during the requisite period. Here, the director reiterated her criteria for credible affidavits. The AAO again notes that the document from [REDACTED] does not state that [REDACTED] personally knows that the applicant resided in the United States during the requisite period.

On appeal, the applicant submits a brief through her attorney that asserts that the document from [REDACTED] is from a United States Citizen. She goes on to say that [REDACTED] affirmed the presence of the applicant in the United States to make the applicant eligible for the benefit sought. Again, the AAO notes that the document from [REDACTED] does not state that Ms. [REDACTED] knows that the applicant resided in the United States during the requisite period. The applicant also asserts that the Service erred in stating that the applicant claimed during her interview with a CIS officer that her first departure from the United States after her initial entry was in 1999. She claims that during her interview she stated that her first departure from the United States after her first entry was in 1988. However, the record shows that both the notes from the applicant's interviewing officer and the Form I-687 that she submitted consistently state that the applicant claimed that her first departure from the United States was in March 1999. The applicant's claims regarding her absences from the United States are not consistent. Therefore, doubt is cast on whether the applicant has fully and truthfully represented her absences from the United States.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for her own inconsistent assertions, two envelopes and the statements and the two letters noted

above, which do not state that the declarants know that the applicant resided in the United States during the requisite period. The letters the applicant submitted in support of her application do not carry any weight in establishing that the applicant resided in the United States for the reasons noted. Though the applicant submitted two envelopes addressed to her during the requisite period, these alone do not carry sufficient weight to prove that the applicant resided continuously in the United States for the duration of the 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 her 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 she 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.