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U.S. Citizenship
and Immigration
Services

61

[REDACTED]

FILE: [REDACTED]
MSC-06-095-15012

Office: DETROIT

Date: OCT 02 2008

IN RE: Applicant: [REDACTED]

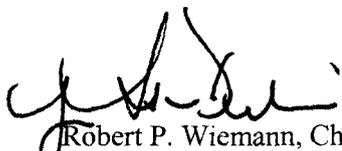
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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. 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, Detroit. 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, the applicant asserts that he was not given the opportunity to prove his case. The applicant states that it is difficult for him to obtain additional evidence because he moved several times and a lot of documents have been destroyed, lost or misplaced. The applicant states that his parents kept his records and they do not know what happened to the records. The applicant submits as additional evidence, copies of his father's J-1 visa and Oklahoma State University student identification card.

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 January 3, 2006. At part #30 of the Form I-687 application where applicants are 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 Queens, New York from June 1980 until August 1988.

On February 17, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded 30 days to submit additional evidence in response to the NOID. 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. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of

contemporaneous documentation that may be furnished 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. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a letter from [REDACTED], notarized on March 13, 2006. The letter states that she is a friend of the “[REDACTED] family” and has known them since 1979. It states that they were neighbors and grew up together in Detroit, Michigan. The letter provides that they would play together and sometimes [REDACTED] would babysit them. The letter further provides that the [REDACTED] family returned to Gambia due to financial difficulties. This letter fails to specify the year that the [REDACTED] family returned to Gambia. As a result, the letter does not indicate the duration of [REDACTED] contact with the applicant in the United States. It is unclear whether [REDACTED] had contact with the applicant in the United States during the requisite period. Therefore, this letter is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

On January 22, 2007, the director issued a notice to deny the application. The director stated that the applicant submitted a form affidavit without a picture identification document in response to the NOID. The director determined that the applicant was unable to provide documentary evidence of his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

While the director was correct in her decision that the applicant failed to meet his burden of proof in the proceeding, there was an error in her analysis. The director’s assertion that the applicant submitted a form affidavit without a picture identification document is inconsistent with the record. The record shows that the notarized letter from [REDACTED] was not in the format of a form affidavit. Furthermore, the letter has attached to it [REDACTED]’s Michigan Operator License. Nevertheless, the director’s action must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that he was not given the opportunity to prove his case. The applicant states that it is difficult for him to obtain additional evidence because he moved several times and a lot of documents had been destroyed, lost or misplaced. The applicant states that his parents kept his records and they do not know what happened to the records.

The applicant submits, as additional evidence, copies of his father's J-1 visa and Oklahoma State University student identification card. The J-1 visa is a multiple entry visa that was issued to the applicant's father, [REDACTED] on August 28, 1979. The visa bears a faded United States entry stamp showing [REDACTED]'s arrival at a New York port of entry on September 4, 1979. The Oklahoma State University student identification card shows that it was issued to [REDACTED] for to the Fall 1979 semester. These documents are probative evidence of [REDACTED]'s entry into the United States prior to January 1, 1982. However, these documents are not relevant to this proceeding because they do not relate to the applicant's entry into the United States.

In conclusion, the applicant has not overcome the basis for the director's denial. The applicant has not submitted sufficient evidence to establish that he has continuously resided in the United States during the entire requisite period. The applicant asserts that his documents had been destroyed, lost or misplaced. However, he 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 submitted as evidence of his residence in the United States during the requisite period, a notarized letter from [REDACTED]. As discussed, this letter does not indicate whether [REDACTED] had contact with the applicant in the United States during the requisite period. As such, it is without any probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet 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 seriously detracts 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 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.