



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] MSC-05-195-17874

Office: NEW YORK

Date: DEC 20 2007

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 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 his eligibility for temporary residence 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)(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)(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. See the CSS Settlement Agreement, paragraph 11 at page 6, and the 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.* 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 (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 issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit any evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on April 13, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED] Brooklyn, New York as his address from August of 1984 to November of 1990; and [REDACTED] apartment [REDACTED] New York, from November of 1990 to the present. Similarly, at part #33, the applicant showed that he was self-employed as a street vendor on [REDACTED] New York, from September of 1988 to the present. The applicant's failure to indicate where he resided prior to August of 1984 suggests that he was then living outside of the United States.

In response to the director's request for evidence dated February 15, 2006, and in an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following affidavits:

- An affidavit from [REDACTED] in which he stated that he met the applicant in 1981 at [REDACTED] that they sold merchandise together on the corner of [REDACTED] and [REDACTED] and that they would speak to each other every day until they became friends. It is noted that the affiant provided and the AAO recognizes copies of his vendor's license and New York State Driver License. The statement made by the affiant is inconsistent with the applicant's statement on Form I-687, at part #33 where he indicated

that he was self-employed as a street vendor from September of 1988. It is also noted that during his interview with Citizenship and Immigration Services (CIS) on November 16, 2005, the applicant stated under oath that he came to the United States in September of 1981 and stayed for less than a week before returning to Senegal. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period and it lacks sufficient details of his relationship with the applicant. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he met the applicant in 1981 at [REDACTED] that they sold merchandise together on the corner of [REDACTED] and [REDACTED] and that they would speak to each other every day until they became friends. It is noted that the affiant provided and the AAO recognizes copies of his South Carolina Identification Card issued to him in Columbia, South Carolina, on December 29, 1988, a Homeless Assistance Identification Pass, and his reduced-fare due to disability card issued to him in 2006. The statement made by the affiant is inconsistent with the applicant's statement on Form I-687, at part #33 where he indicated that he was self-employed as a street vendor from September of 1988. It is also noted that during his interview with CIS on November 16, 2005, the applicant stated under oath that he came to the United States in September of 1981 and stayed for less than a week before returning to Senegal. As noted in the previous paragraph, this inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] of the Mount Sinai Diagnostic and Treatment Center, New York, New York, dated February 3, 2006, in which he stated that in regards to "August 82" the applicant requires physical therapy and originally came to him because of

problems he was having with his right eye. Dr. [REDACTED] has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this letter. Dr. [REDACTED] testified to the applicant's visiting his office in August of 1982 however, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which the doctor maintained communications with the applicant. Because this letter is significantly lacking in detail and because it addresses a date that is subsequent to the onset of the requisite time period, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted by the applicant do not meet the credible affidavit criteria. The director also noted that the discrepancies that exist between the applicant's testimony and the evidence of record require objective evidence to support the applicant's claim.

On appeal, the applicant attempts to explain these discrepancies. He states that he realized that he had made a mistake during the interview concerning the date he arrived in the United States and the date he left the country thereafter, that the interviewer would not let him correct the error, and that this led to his application being denied. The applicant further states that he came to the United States in September of 1981, remained in the country until June of 1984, and returned to the United States in August of 1984. He also states that he did not prepare his Form I-687 application, that he doesn't read, and that therefore, he was unable to find the mistakes in his application. The applicant concludes by stating that he provided proof, through the affidavits submitted, of his residency in the United States prior to January 1, 1982, and until May 4, 1988. The applicant does not submit any additional evidence on appeal.

It is noted that during the applicant's interview with CIS officials on November 16, 2005, he stated under oath:

I came to America in September of 1981 for less than one week. After 5 days I went back to Senegal. The next time I came to America was in 1984 and I stayed for three years until 1987. The reason I did not stay was because I had a store. I would come here, buy items and go back. The last time I came was May[,] 2003. I have been here since.

Here, because the applicant presents multiple conflicting statements and evidence, independent objective evidence is required to support his claim of eligibility. There is nothing in the record to demonstrate that the applicant determined that he had made a mistake during his interview and attempted to correct it. Although the applicant had an opportunity to address the multiple discrepancies found in his testimony and on his Form I-687 application in responding to the NOID dated February 15, 2006, he failed to do so. Because the statements and evidence are inconsistent, and no independent objective evidence has been presented to explain the inconsistencies, doubt is cast on the assertions made as they relate to the applicant's residence in 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. *Matter of Ho*, 19 I&N Dec. 582

(BIA 1988). The applicant stated that he did not prepare his Form I-687. However, section #44, where the preparer other than the applicant is supposed to identify them self, was left blank. The applicant has not provided a plausible explanation for this discrepancy.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. He has failed to overcome the director's decision on appeal. The affidavits from [REDACTED] and [REDACTED] conflict with other evidence in the record and are significantly lacking in detail. The letter from Dr. [REDACTED] lacks sufficient detail and addresses a date that is subsequent to the requisite time period.

The absence of sufficiently detailed 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 applicant's contradictory statements on his applications and during his interview, and 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.