



U.S. Citizenship
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FILE:



Office: NEW YORK

Date: MAR 06 2008

MSC-05-313-21342

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. 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 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, together comprising the I-687 Application. He filed the application on August 9, 2005, using the name of "[REDACTED]". 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. She noted specifically that (1) the applicant stated that he first entered the United States in 1981 when he was eight years old, but he failed to include school records or medical records as proof of his residence; (2) the single affidavit he submitted as evidence of his residence in the United States during the requisite period was neither credible nor amenable to verification; and (3) he stated at his interview with U.S. Citizenship and Immigration Services (CIS) that he never traveled outside the United States between 1980 and 1988, thus contradicting information on his Form I-687 Supplement. Based on the paucity of evidence and his conflicting statements, the director denied his application on June 1, 2007, finding that he 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 states that he entered the United States on January 1, 1982 and did not depart the country between the time he entered and 1988. Regarding the sole affidavit he submitted, he indicated that the affiant, "[REDACTED]", "received [him] and [his] father" when they first entered the United States and they stayed with him for two weeks. He submitted no additional information. The AAO agrees with the director's conclusion that the applicant has failed to provide sufficient evidence of residence for the duration of 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)(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. 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). 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous unlawful residence in the United States for the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted one affidavit in support of his application. It is from [REDACTED], who identifies himself as the General Manager of the Parkview Hotel in New York City and provides a business card confirming his position; it was notarized on December 14, 2005. His statement includes the following: "I have known [REDACTED] since 1981. Since I've known him [sic], he has always been a pleasure to be around I can vouch for his presence in the United States from 10/1981 to 11/1981." By stating on appeal that he entered the United States in January 1982, the applicant has contradicted this affidavit, his application and prior assertions that he entered in 1981. Moreover, [REDACTED]'s affidavit attests to the presence in the United States of either [REDACTED] or [REDACTED] for one month in 1981. It is therefore not relevant to the applicant's claim of residence for the requisite period, and it has no probative value, as it is not clear whether [REDACTED] is referring to the presence of [REDACTED] or [REDACTED]. As the applicant has provided contradictory statements and has not submitted additional evidence of residence, he has not established by a preponderance of the evidence that he is eligible for temporary residence under the terms of the CSS/Newman Settlement Agreements.

During the adjudication of this appeal, it was revealed that the applicant had previously filed an application for asylum. Based on investigations and fingerprint and photograph comparisons, CIS consolidated the applicant's record, combining his file [REDACTED] containing the prior asylum application, with the file under his alias, [REDACTED] which includes the I-687 Application that is the subject of this appeal. A review of the administrative record reveals the following additional inconsistencies and misrepresentations:

- The applicant filed a Form I-589, Application for Asylum, on September 27, 2001, which he signed under penalty of perjury. He repeated his claim to a CIS Asylum Officer in November 2001 and testified under oath in Immigration Court in February 2003. He testified that his name was [REDACTED]; he was born in Mauritania on December 20, 1974 and resided there until 1990, when he and his family were forced to go to Senegal; and he arrived in the United States on November 27, 2000. He indicated on his Form I-589 that he had not previously entered the United States.
- In his I-687 Application, currently pending on appeal, which was submitted on August 9, 2005, the applicant provided contradictory information. He stated that his name was [REDACTED]; he was born on February 10, 1973 in Senegal; and he resided in the United States from 1981 through 2000.

The applicant's statements, made under penalty of perjury on his asylum application, as well as his testimony under oath in his hearing before an Immigration Judge and in an interview with an asylum officer, indicate that he resided in Mauritania until 1990 and thereafter in Senegal until 2000. This sworn testimony contradicts his current claim on his I-687 Application that he has lived in the United States since 1981. He has also made contradictory claims under oath and under penalty of perjury regarding his name and country and date of birth. Because of the inconsistent testimony he has given under oath in immigration proceedings, he has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the requisite period.

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 visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO issued a letter to the applicant on February 5, 2008, informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant of the relevant ground of inadmissibility under section 212(a)(6)(C) and that, as a result of his actions, his appeal would be dismissed, a

finding of fraud would be entered into the record, and the matter would be referred to the U.S. Attorney for possible prosecution. *See* 8 C.F.R. § 245a.2(t)(4).

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. As of the date of this decision, no response has been received by the AAO. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof to establish by a preponderance of the evidence that he has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, as the record reflects that the applicant has submitted contradictory applications and made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact, a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.