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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:



Office: NEW YORK

Date:

JUN 22 2009

MSC-05-204-11676

IN RE:

Applicant:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

John F. Grissom
Acting 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 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). The director denied the application and determined that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he had resided in the United States continuously throughout the requisite period. Specifically, the director noted that the applicant's testimony during his interview was inconsistent with his Form I-687 application and the evidence of record.

On appeal, counsel for the applicant contends that the inconsistencies in the record as noted by the director are not supported by the evidence in the record, and further asserts that the evidence submitted, when combined with the applicant's testimony, is sufficient to approve the application for temporary resident status. The director, according to counsel, improperly weighted the affidavits and the applicant's testimony.

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)(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, "[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 applicant 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 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 furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

To show that he has resided continuously in the United States since before January 1, 1982 the applicant submitted two affidavits. Both affiants generally claim to have known the applicant since December 1981. One of them lists the addresses at which the applicant has been residing since December 1981. Neither, however, describes with sufficient detail how he or she first met the applicant in the United States, how he or she dates his or her acquaintance with the applicant in December 1981, or offers other details about the applicant's life in the United States during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Simply listing the address where the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982.

During his interview on June 28, 2006, the applicant stated he first entered the United States in 1981 by boat and further claimed to have resided continuously in the United States since that date. This statement, as the director noted in his decision, is inconsistent with the evidence of record. The applicant indicated on his asylum application and during his asylum interview on August 2, 2001 that he first came to the United States on October 22, 2000 by boat. The applicant also stated at part #28 of his asylum application that he resided in Bo, Sierra Leone from 1962 through 1999. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. On appeal, the applicant fails to resolve these inconsistencies.

The two affidavits submitted, when considered individually and in light of other evidence of record together, do not establish by a preponderance of the evidence that the applicant resided continuously and was physically present in the United States during the requisite periods.

The noted inconsistencies, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 the applicant 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.

The AAO additionally notes that the applicant is inadmissible and thus, ineligible for the benefit sought as he failed to appear before an immigration judge for his individual hearing on October 3, 2002, and was consequently removed pursuant to Section 240 of the Act. Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii); Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). Although the applicant's inadmissibility here may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility.

The record also reveals that the applicant may be inadmissible due to his criminal background. According to the record, the applicant was arrested in the State of Georgia and charged with obstructing police officers on July 18, 1999. The record also shows that the applicant was arrested in the State of New York and charged with one count of trademark counterfeiting in the third degree and with failure to disclose the origin of a recording in the second degree on March 30, 2005 in

violation of New York Penal Law §§ 165.71 and 275.35, respectively. No criminal dispositions or official court documents on these charges are provided. Thus, the applicant has not established that he is admissible to the United States under the provisions of section 245A of the Act. The application may not be approved for these additional reasons.

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