



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-127-10617

Office: CLEVELAND, OHIO

Date: DEC 17 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:

SELF-REPRESENTED

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.


for 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, Cleveland, Ohio. 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, on February 4, 2005. 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. Specifically, the director noted that though one (1) affidavit the applicant submitted in support of his application was verifiable, the affiant who submitted that affidavit, [REDACTED] did not meet the applicant until May of 1986. Other evidence submitted by the applicant that pertained to the requisite period was not amenable to verification. Therefore, the director denied the application as 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 has continuously resided in the United States from July 1981 until December of 1988. The applicant submits additional statements in an attempt to confirm his residence in the United States during 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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).

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 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 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 furnished sufficient credible evidence to demonstrate that he resided in the United States from a date prior to January 1, 1982 through the date he attempted to file a Form I-687 application with Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 February 4, 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 his addresses in the United States during the requisite period as follows: [REDACTED] in Elmhurst Queens, New York from March 1981 until April 1987; [REDACTED] in New York City from April 1987 until December 1988. At part #33 of his Form I-687, where the applicant was asked to show all of his employment since he first entered the United States, he showed that his first employment was as a self-employed street vendor on the corner of [REDACTED] from 1986 until December 1988.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his 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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following:

- A letter from [REDACTED] dated February 10, 2006. In this letter, Ms. [REDACTED] states that she has known the applicant since May 1986. She states that she met him in Manhattan, New York when he was selling accessories in the street. She states that the applicant visits her when he is in New York. Here, Ms. [REDACTED] does not indicate the frequency with which she saw the applicant during the requisite period. She does not list an address at which it is personally known to her that he

resided at that time. She does not offer proof that she herself was in the United States during the requisite period. Though the record indicates that the Service successfully contacted Ms. [REDACTED] and verified information in this affidavit, it only pertains to part of the requisite period. Therefore, it does not carry any weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A letter from [REDACTED] that is dated December 13, 2004. In this letter, Ms. [REDACTED] states that she met the applicant in December of 1987 in Harlem, New York. Here, Ms. [REDACTED] does not state the frequency with which she saw the applicant during the requisite period. She does not list an address at which it is personally known to her that the applicant resided at that time. She does not offer proof that she herself was in the United States during the requisite period. Ms. [REDACTED] does not include a telephone number at which the Service can reach her to verify information contained in this letter. Because this letter is not amenable to verification, because it is significantly lacking in detail and because it establishes that Ms. [REDACTED] did not meet the applicant until December of 1987, it carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A letter from [REDACTED] dated November 29, 2004. In this letter, Ms. [REDACTED] states that the applicant's uncle, [REDACTED] Fall, lived in her house with the applicant. She states that the applicant's uncle signed a lease agreement with her from March of 1981 until April of 1987. Here, though Ms. [REDACTED] indicates when the applicant's uncle resided at her house, she does not indicate when the applicant resided there. Ms. [REDACTED] has not provided proof that she herself resided at this house, nor has she provided documents that establish that she resided in the United States during the requisite period. She has further failed to provide a telephone number at which she can be reached to verify information in this letter. Because this letter is not amenable to verification, and because it is significantly lacking in detail regarding the dates of the applicant's residence in the United States, this letter can be afforded minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since March of 1981. The only evidence submitted with the application that is relevant to the 1981-88 period in question were three (3) affidavits, two (2) of which were not amenable to verification and the other of which did not pertain to the duration of the requisite period.

In denying the application the director noted the above, and the fact that at the time of his interview with a Citizenship and Immigration Services (CIS) officer, the applicant could provide no details of his relationships with affiants Teresa Pettway or Jeanette Stevens, nor could he provide that officer with their contact information. The director further noted that though the applicant claimed to have entered the United States when he was nine (9) years old, he stated he did not attend school at any time after entering. She found that this was not credible, as the applicant then returned to Senegal where he immediately entered and then graduated from high school after missing seven (7) years of school. Though not relevant to the applicant's residency in the United States during the requisite period, she further noted that the record showed that the applicant previously violated his immigration status after entering the United States with an F-1 visa after the requisite period had ended. She went on to say that he denied he had violated this status at the time of his interview.

On appeal, the applicant submits a statement in support of his appeal and he submits additional evidence from [REDACTED]. He states on his Form I-694 Notice of Appeal of Decision that he did enter the

United States in July of 1981 and remained for the duration of the requisite period. It is noted that the applicant showed that he resided in the United States since March of 1981 rather than July of 1981 on his Form I-687. Details of the evidence submitted with the applicant's appeal is as follows:

- The applicant's statement in support of his appeal is dated March 23, 2006 and states that he admits that he did violate his immigration status. He goes on to assert that he resided continuously in the United States for the duration of the requisite period.
- A letter from [REDACTED] dated March 21, 2006. In this letter, Mr. [REDACTED] states that he met the applicant in July of 1981 when the applicant entered the store where he worked part time in the Bronx. He states that he only lived in New York during the summers, but that the applicant and his uncle came to the store almost every day. Though Mr. [REDACTED] states that he met the applicant in June of 1981, he does not state the dates through which he saw the applicant during the requisite period. He does not present evidence that he himself resided in the United States for the duration of the requisite period. He fails to provide an address at which he personally knows that the applicant resided during the requisite period. In his letter, Mr. [REDACTED] states that he only lived in New York during the summers and he shows his current address as being in Memphis, Tennessee. Though not required to do so, Mr. [REDACTED] does not provide identity documents with this letter. Because Mr. [REDACTED] states that he only resided in New York during the summers and because his letter is significantly lacking in detail with regards to the applicant's residence during the requisite period, this letter carries very minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from four (4) people, two (2) of whom the applicant did not have contact information for, one (1) of whom did not meet the applicant until May of 1986 and one (1) of whom only saw the applicant during some summers of the requisite 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 reliance upon documents that are either not amenable to verification or do not pertain to the duration of the requisite period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.