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JUL 19 2007

FILE: [REDACTED] Office: CINCINNATI Date: [REDACTED]  
MSC 05 202 11360

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. 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.

  
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the 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. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits an affidavit in support of his claim of continuous 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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 furnished sufficient credible evidence to demonstrate that he resided 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 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 April 20, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at “[redacted] Brooklyn, New York” from February 1981 to May 1983; at “[redacted] Brooklyn, New York” from May 1983 to September 1991; at “[redacted] Elmsford, New York” from September 1991 to October 1999 and at “[redacted] Cincinnati, Ohio” from October 1999 to December 2000. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he was a self-employed street vendor in New York, New York, from February 1981 to November 2000. The applicant did not submit any evidence to establish continuous residence in the United States during the requisite period with the Form I-687.

At his interview with a CIS officer on March 13, 2006, the applicant stated that he first entered the United States in February 1981 with his father at the age of 15 and that he was included in his father's passport and visa. The applicant further stated that he left the United States in 1987 to return to Mauritania and was absent from the United States for over one year. He claimed that he and his family experienced "trouble" in Mauritania and were sent to Senegal. The applicant indicated that he returned to the United States in 1989 and remained in this country until another absence from 1998 to 1999. The applicant did not submit any evidence to establish his continuous residence in the United States during the requisite period at the time of his legalization interview.

In a separate proceeding the applicant filed an asylum application with the Service on January 10, 2000. The applicant indicated on the asylum application that he last entered the United States on August 19, 1999, at New York, New York, using a fraudulent passport. He further indicated that he attended high school in Mauritania from September 1980 to July 1986. At part #28 of the asylum application, where asylum applicants are instructed to list all residences for the last five years, the applicant indicated that he resided at "[redacted] Dakar, Senegal" from November 1990 to August 1999 and at "[redacted] Cincinnati, Ohio" from August 1999 to the filing date of the asylum application. At part C of the asylum application, where asylum applicants are instructed to explain why they are seeking asylum, the applicant indicated that he and his family were arrested in Nouakchott, Mauritania, and taken to a military camp. The applicant claimed he and his family were subsequently deported to Senegal and told never to return to Mauritania.

On March 20, 2003, the Director of the Chicago, Illinois, asylum office found the applicant to be ineligible for asylum in the United States because he failed to file his asylum application within one year of the date of last arrival in the United States, and failed to demonstrate that changed circumstances materially affected his eligibility for asylum or that there were extraordinary circumstances that delayed his filing of the asylum application. The director further found that there were serious doubts as to the credibility of the applicant's testimony on the asylum application and during the asylum interview. The director noted that, when the applicant was requested to provide his exact date of arrival in the United States, he was unable to recall the exact date, only that he purportedly arrived in this country in August 1999. The director further noted that the applicant was unable to provide other important details from his first trip to the United States, including the name in the fraudulent passport he allegedly used to gain admission in the United States, the type of visa it contained, or his class of admission at the time of initial entry. The director stated that the applicant claimed he came to the United States with the assistance of a smuggler, but was unable to remember the smuggler's name.

The director also found that the applicant's testimony concerning material aspects of his asylum claim lacked credibility. The director noted that the applicant's claim on the asylum application that he was deported to Senegal in November 1990 contradicted his claim during his asylum interview that he was deported to Senegal in April 1989. The director stated that the applicant

was unable to reasonably explain this discrepancy when asked to do so during his asylum interview.

The applicant's claim on the Form I-687 and during his legalization interview that he entered the United States in February 1981 contradicts his claim on the asylum application that he entered the United States in August 1999. The applicant made no claim of entry into the United States prior to 1999 on the asylum application or during his asylum interview. Furthermore, the applicant indicated on the asylum application that he attended high school in Mauritania from September 1980 to July 1986. That claim contradicts his claim on the Form I-687 that he lived in the United States from February 1981 to 1987. Additionally, the applicant's claim on the asylum application that he had resided at "[REDACTED] Dakar, Senegal" from November 1990 to August 1999 contradicts his claim on the Form I-687 that he resided at "[REDACTED], Elmsford, New York" from September 1991 to October 1999. Moreover, the applicant's claim on the Form I-687 that he lived in the United States from 1989 to 1998 contradicts his claim on the asylum application that he lived in Senegal from November 1990 to August 1999.

On appeal, the applicant submits an affidavit from [REDACTED] a resident of Chicago, Illinois. The affiant stated:

I met [REDACTED] in June of 1980 in NY City. I was accompanying my father who was visiting [REDACTED] father. . . [REDACTED] and I kept in contact until 1984 when we lost contact for 15 years. He managed to contact me in 1999, soon there after I moved to Cincinnati, OH where we worked together at Walgreen's.

The affiant's testimony that the affiant first met the applicant in New York, New York, in 1980 contradicts the applicant's claim on the Form I-687 and during his legalization interview that he first entered the United States in February 1981. Furthermore, the applicant did not list any employment with Walgreen's in Cincinnati, Ohio, on the Form I-687. Furthermore, the affiant did not provide any specific verifiable information such as the applicant's address(es) in the United States during the requisite period.

The applicant has not provided any explanation for the discrepancies and contradictions noted above. 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 application. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The absence of credible supporting 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 legalization and asylum applications and his reliance upon a document with minimal probative value, 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.