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U.S. Citizenship
and Immigration
Services

L1

[Redacted]

FILE: [Redacted]
MSC-05-130-10989

Office: Providence

Date: JUN 12 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, Providence, Rhode Island, 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. The director also determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of his claimed qualification for legalization under section 245A of the Act, 8 U.S.C. 1255a. On this basis, the director denied the application.

On appeal, counsel for the applicant asserts that the applicant was denied the use of his spouse as an interpreter during his interview. Counsel claims that the adjudicating officer refused to reschedule the interview. Counsel maintains that the failure to allow the applicant to use an interpreter resulted in a biased decision. Counsel asserts that the director failed to properly weigh documentation that was deemed to be inconsistent with the application. Counsel requests that the matter be remanded to the district office for a reinterview conducted with the use of an interpreter.

The record does not contain any evidence to support counsel's assertions that the applicant was denied the use of an interpreter and the opportunity to reschedule his interview. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, 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.

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).

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. 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 director's Notice of Intent to Deny provides, in part, that during the interview the applicant had a paper in his hand that contained a chronology of the applicant's purported residences during the requisite period. The director noted that the document, "details how you entered the

United States and it indicates that you have six children and that you were married twice in Senegal: once in 1978 and again in 1988. This paper appears to have been prepared to help you through your I-687 interview.” On appeal, counsel for the applicant attempts to overcome the director’s negative credibility determination by asserting that:

The paper that the immigration interviewer demanded from the Applicant on the one hand is used by the District Director as “evidence” that the Respondent has six children [sic] not two as listed on the Application and that the Applicant was outside if [sic] the United States in 1988. The District Director does not use so-called evidence to support the Applicant’s testimony that he entered the United States in 1981.

This proceeding will evaluate the *overall* documentary evidence contained in the applicant’s record to assess whether the applicant has established by a preponderance of the evidence that he 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. 8 C.F.R. § 245a.2(d)(5).

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on February 7, 2005. The applicant signed this application under penalty of perjury certifying that the information contained in the application is true and correct. Part 30 of this application requests the applicant to list all of his residences in the United States since his first entry. The applicant reported that he resided at [REDACTED], Woonsocket, RI from 1981 until 1986 and [REDACTED], Woonsocket, RI from 1986 until 1991. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant reported that he has been “self employed” as a vendor in Rhode Island and New York from 1981 until the present time. However, the applicant has failed to provide credible evidence to corroborate this purported residence and employment.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence. An applicant may also provide “any other relevant document” as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted two documents entitled “Affidavit of Witness” to corroborate his residence in the United States during the requisite period. The weight to be given to affidavits depends on the totality of the circumstances. Affidavits are evaluated based on the affiant’s specific, personal knowledge of the applicant’s whereabouts during the time period in question, and documentation to verify the affiant’s credibility such as a copy of his/her identity document.

The applicant submitted an "Affidavit of Witness" from [REDACTED]. This notarized "fill in the blank" document provides that [REDACTED] has personal knowledge that the applicant resided in the United States from July 1981 until the present time. However, this document contains several apparent deficiencies. The document fails to provide specific information related to [REDACTED]'s personal knowledge of the applicant's residence in the United States from July 1981 until the present time. The document provides that the applicant has resided in Woonsocket, RI during the aforementioned time period, but fails to provide specific information on the applicant's addresses in Woonsocket, RI. The document also fails to provide information on the extent of [REDACTED] contact with the applicant during the requisite period. Finally, the document does not contain an identity document to establish the credibility of [REDACTED]. Therefore, this document can only be afforded minimal weight to establish by a preponderance of the evidence that the applicant resided in the United States during the requisite period.

The applicant submitted an "Affidavit of Witness" from [REDACTED]. This notarized "fill in the blank" document provides that [REDACTED] has personal knowledge that the applicant resided in the United States from November 1981 until present time. However, this document also contains several deficiencies similar to the document from [REDACTED]. The document fails to provide specific information related to [REDACTED] personal knowledge of the applicant's residence in the United States from November 1981 until present time. The document provides that the applicant has resided in Woonsocket, RI during the aforementioned time period, but fails to provide specific information on the applicant's addresses in Woonsocket, RI. The document also fails to provide information on the extent of [REDACTED] contact with the applicant during the requisite period. Finally, the document does not contain an identity document to establish the credibility of [REDACTED]. It should be noted that [REDACTED] provides in his statement that in 2002 the applicant was employed with Tech Industries. This information is inconsistent with the applicant's I-687 application, dated February 7, 2005, which provides that the applicant has been self employed as a vendor in Rhode Island and New York from 1981 until the present time. Therefore, this document is also afforded minimal weight to establish by a preponderance of the evidence that the applicant resided in the United States during the requisite period.

The applicant has not provided any other documentation to support his claim of continuous unlawful residence during the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, "[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." Here, the submitted evidence is not relevant, probative, and credible. The absence of sufficiently detailed 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 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, 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 director's finding of the applicant's inadmissibly pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of his claimed qualification for legalization under section 245A of the Act, 8 U.S.C. 1255a, is not supported by the record. Therefore, the director's finding of inadmissibility is withdrawn. Nevertheless, the applicant remains ineligible for temporary resident status based on his failure to establish continuous unlawful residence in the United States during the requisite period. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

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