



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CLEVELAND

Date: JUN 13 2007

MSC 05 231 15822

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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

The director determined that the applicant had not proven by a preponderance of the evidence that he resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245a of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. Specifically, the director mentioned the applicant's application for asylum, which was filed on June 5, 2000 and approved by the Board of Immigration Appeals on July 9, 2003. The director identified inconsistencies between testimony offered by the applicant at his asylum interview and at his interview for temporary resident status. As a result of these inconsistencies, the director denied the Form I-687 application.

On appeal, the applicant offered an explanation for his failure to mention his asylum hearing. The applicant submitted no additional documentation in support of his appeal.

An applicant for temporary residence 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. § 1225a(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; and 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 residence 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 from 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 May 19, 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 listed [REDACTED] Detroit, Michigan from August 1980 to October 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a form letter affidavit signed by [REDACTED] together with a copy of his employment authorization document issued pursuant to his pending asylum application, his driver's license issued January 12, 2001, and a copy of his French language birth certificate with English translation. In her affidavit, [REDACTED] indicated she had personal knowledge that the applicant resided in the United States from August 1980 to October 1990. She explained that she lived in the same neighborhood as the applicant,

but did not indicate the address where the applicant was living during the time period when they were neighbors. [REDACTED] provided no contact phone number. The record does not include any supporting documentation related to [REDACTED]'s identity, her knowledge of the applicant, or her presence in the United States during the statutory period.

A review of the record revealed that the applicant filed a Form I-589 application for asylum with the Service on June 5, 2000 which was approved by the Board of Immigration Appeals on July 9, 2003. In denying the I-687 application, the director noted inconsistencies between the applicant's testimony related to his legalization application and related to his asylum application. These inconsistencies are found not to be substantiated by the record or material to the applicant's legalization application. Specifically, the director pointed to inconsistencies in the Applicant's testimony regarding his "first entry" into the United States, although no testimony has been identified in the record of asylum or legalization proceedings where applicant specified the date he first entered the United States. In addition, the director explained that the applicant had testified in his asylum interview that he was forced to flee to Senegal in 1989. This statement is found only to involve activities falling outside the statutory time period. Therefore, any inconsistency in relation to this statement is found to be immaterial to the legalization application.

The district director determined that the applicant had failed to prove 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 Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section.

On appeal, the applicant provided an explanation for his failure to mention his asylum application. He provided no additional documentation in support of his I-687 application.

The applicant is found to have submitted insufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted an affidavit that lacks sufficient detail. Specifically, [REDACTED] did not indicate the address at which the applicant was living when she was his neighbor, she did not provide a contact phone number, and she provided no identity documentation.

The absence of sufficiently detailed and consistent 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 limited quantity of evidence provided by the applicant, and 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 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.