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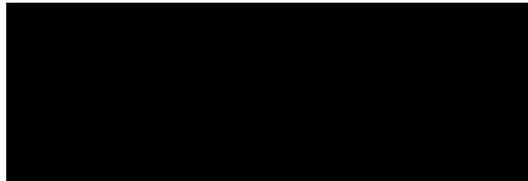


FILE: MSC-05-257-13986

Office: CLEVELAND

Date: SEP 06 2007

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: 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, and that decision 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) during in the original legalization application period. Specifically, the director noted inconsistencies in the record regarding the applicant's address and employment during the requisite period. 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 a brief, asserting that he cannot read or write and therefore he relied on another individual to complete his Form I-687. He attempts to account for the contradictions in his previously furnished evidence regarding his place of residence in the United States and his employment 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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).

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 June 14, 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 first address in the United States during the requisite period to be in at [REDACTED] from 1982 to 1988. He then showed a residence at [REDACTED] New York from 1988 to 1996. At part #32 where the applicant was asked to list all absences from the United States since entry, he indicated one absence, from 1988 to May 1996, indicating the purpose of this absence was a family visit. It is not clear which month the applicant left the United States, nor is it clear when he tried to file his Form I-687 during the initial filing period. Therefore, it is not clear

whether the applicant was absent for a period of time in 1988 that exceeded forty-five (45) days during this applicant's requisite period. At part #33, where the applicant is asked to show all of his employment since his date of entry he showed no employment during the requisite period.

The record also contains a form I-589, Application for Asylum and Withholding of Deportation, signed by the applicant under penalty of perjury on September 2, 1996. While the applicant's Form I-687 shows that he was absent from the United States from 1988 until May 1996, his Form I-589 shows the applicant entered the United States on December 15, 1995. Relevant to the requisite period, part B(1) asks the applicant to list his spouse. Here, the interviewing officer indicated that the applicant stated that he married Faty A. War in Mauritania in 1986. This indicates that the applicant was absent from the United States in 1986. However part #32 of the applicant's Form I-687, indicates that the applicant was not absent from the United States at any point in time from January 1, 1982 until 1988. This inconsistency is material, as it occurred during the requisite period and indicates that an absence took place for an undetermined length of time.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Also in the record is photocopy of an untranslated "Carte Consulaire D'Identitie" or consular identity card issued by the Ministry of Foreign Affairs of Mauritania. This document contains a photograph of the applicant and indicates that it is issued to [REDACTED] a name the applicant has used on other documents in the record. This document shows the owner's address in Senegal as Rue 26 x 37 [REDACTED]. The number of this document is [REDACTED]. An issue date of March 23, 1982 is shown on this document and it is indicated that it is valid for 3 years. It appears that this document was renewed in [REDACTED] on July 20, 1985 by the Consulate General of Mauritania. This document appears to have been both issued to and renewed by the applicant in Senegal during the requisite period, in March 3, 1982 and July 20, 1985 respectively. These dates do not correspond with the one absence that the applicant indicated on his Form I-687, which he indicated occurred between 1988-1996. This casts doubt on whether the applicant has represented all of his absences accurately on his Form I-687 and therefore calls into question his assertion that he maintained continuous residence during the requisite period.

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 initially provided one affidavit from the Parkview Hotel. After receiving the director's NOID, he submitted an additional affidavit from [REDACTED]

The affidavit from [REDACTED] who indicates that he is the General Manager of the Parkview Hotel, was signed on December 28, 2005. It provides that the affiant has known the applicant since 1982. [REDACTED] states that the applicant lived in apartment #5B2 from 1982 to 1988. The address of this hotel is: Parkview Hotel, [REDACTED]. As was previously noted, the applicant showed his address from 1982 to 1988 as [REDACTED]

[REDACTED] These addresses are not consistent. Therefore, the presence of this conflicting information in the record casts doubt on this affidavit. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The second affidavit was submitted after the applicant received a NOID from the director. This affidavit is from [REDACTED] who states he first met the applicant in December 1981 in New York when the applicant was a street vendor. The affiant does provide an identity document with his affidavit. However, the affiant does not establish that he was present in the United States during the requisite period. The affidavit also does not establish that the affiant had constant contact with the applicant during the entire requisite period. Further, as noted by the director, the applicant did not indicate that he was a street vendor on his Form I-687. This affidavit is found to carry very little weight as it both does not establish that the applicant was continuously in the United States during the requisite period and conflicts with information provided by the applicant on his Form I-687.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since 1982. However, the two pieces of evidence submitted with the application that are relevant to the 1981-88 period in question showed the applicant lived at an address that was not consistent with the address he showed on his Form I-687 and that he worked as a street vendor during the requisite period, which is also not consistent with what he showed on his Form I-687.

In denying the application the director noted the above, and the fact that the applicant could not recall his date of entry with the CIS officer on December 30, 2005.

On appeal the applicant attempts to explain these contradictions.

In his brief submitted as a rebuttal to the director's denial, the applicant indicates that another individual completed his application and therefore his apartment number was inaccurately represented. However, at part #44 of the application, no one's name and signature appear as the preparer of the application. In his brief he also acknowledges that the affidavit from [REDACTED] states that he is a street vendor, which conflicts with what he showed on his Form I-687. As a response to this, he states though he did not represent his employment on his Form I-687 as being a street vendor, he left this employment off of the Form I-687 because he was working without a license. He goes on to say that the second affidavit he submitted from the Parkview Hotel did contain inaccurate information regarding his place of residence. He states that he does not know why this is inaccurate. However, he states that while he did not reside in the Parkview Hotel and while he did submit an affidavit from the Parkview Hotel which indicated that he lived there, "I used to come there every day for some reason, but I have never lived in the Hotel."

The director did not note the inconsistency found between the applicant's Form I-687 and his previously submitted Form I-589, which indicated that the applicant was present for his wedding in Mauritania in 1986. The director also did not note that the applicant was issued an identity card in Senegal in 1982 or that the applicant then renewed that card in Senegal in 1985, when the applicant claims not to have left the United States at any point between January 1, 1982 and 1988. Because the director did not note these discrepancies, the applicant did not address them in his brief.

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 attestations from only two people concerning that period, both of which conflict with information he provided on his Form I-687. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States.

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 contradictory statements on his application and his 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.