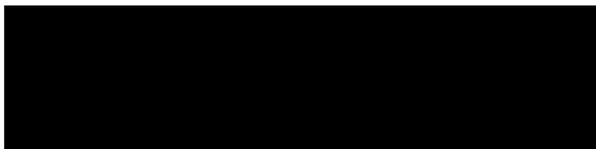


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41

FILE: [REDACTED]
MSC-05-281-12185

Office: DETROIT

Date: SEP 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:



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

The director determined the applicant had not shown by a preponderance of evidence that he meets the eligibility requirements for temporary resident status under 8 C.F.R. § 245a.12(b). As a result, the director denied the application.

On appeal, the applicant reiterated that he is eligible for temporary resident status, reviewed the evidence presented, and provided new evidence to support his application.

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 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 applicant 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 applicant 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 and 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 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 Immigration and Naturalization Service (INS) 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 Citizenship and Immigration Services (CIS) on July 8, 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 as his residence during the requisite period only [REDACTED] Pontotoc, Mississippi from November 1980 to April 1989. With his application, the applicant submitted a signed and notarized declaration from Edward [REDACTED], case manager with Case Management, Inc. In this declaration dated May 9, 2005, Mr. [REDACTED] stated that he has known the applicant since 1981. He also stated that the applicant "came back to the United States . . . in 1999-2003" However, the declarant failed to specifically confirm the applicant resided in the United States for any specific portion of the requisite period. The applicant also submitted a letter dated March 28, 2006 in which [REDACTED] explained that he would be unable to appear for the applicant's interview with an immigration officer on March 29, 2006.

In response to a Notice of Intent to Deny issued to the applicant on March 29, 2006, the applicant provided a photocopy of a signed letter from [REDACTED]. In the letter, [REDACTED] stated that the applicant is eligible for temporary resident status and that he knew the applicant's father, "personally from living in the United States." However, [REDACTED] failed to confirm the applicant resided in the United States for any specific portion of the requisite period. The applicant also submitted a letter from himself reviewing the evidence submitted and explaining the difficulty in obtaining evidence after the passage of time.

The record indicates the director made two attempts to contact [REDACTED]. The first attempt, on March 29, 2006, received no response. The second attempt, on May 11, 2006, was returned by the United States Postal Service, marked, "unclaimed."

In denying the application, the director found that the applicant had not shown by a preponderance of evidence that he meets the eligibility requirements under 8 C.F.R. § 245a.12(b). The director also noted the multiple unsuccessful attempts to contact [REDACTED].

On appeal, the applicant reiterated that he is eligible for temporary resident status, reviewed the evidence presented, and provided new evidence to support his application. Specifically, the applicant submitted multiple unsigned forms from individuals, as well as one signed affidavit and one signed declaration.

The applicant submitted a copy of another signed affidavit from [REDACTED]. In this affidavit, Mr. [REDACTED] stated that he had been informed that a letter to him was returned to CIS unclaimed and explained that he was unaware of why the letter was not delivered to his home. [REDACTED] also referred to an attached form he had filled out with more specific information regarding his knowledge of the applicant. The applicant included unsigned copies of three previously submitted letters from [REDACTED]. The form prepared by [REDACTED] explained that he had met the applicant's father in 1981. In this form, [REDACTED] also stated that he did not know how the applicant entered the United States and that he visited the applicant's father in Mississippi, "where they were living." This form does not specifically confirm that the applicant resided in the United States for any specific portion of the requisite period.

The applicant provided a form prepared by [REDACTED]. [REDACTED] stated in this form that the applicant resided in the United States throughout the requisite period. However, the form is unsigned and does not include an oath. In addition, [REDACTED] was in Senegal throughout the requisite period and could only confirm the applicant's residence indirectly, because his and the applicant's father had corresponded throughout the period. As a result, this form carries very little evidentiary weight.

The form from [REDACTED] explains that [REDACTED] is the applicant's uncle. He received several phone calls from the applicant in the United States from 1982 to 1988. Again, since this form is unsigned and does not include an oath, it is accorded very little evidentiary weight.

The form from [REDACTED] explains that [REDACTED] received several telephone calls from the applicant in the United States and received a letter from him each year since 1982. [REDACTED] failed to confirm the applicant resided in the United States for any specific portion of the requisite period. In addition, this form is unsigned and does not include an oath. As a result, it is accorded very little evidentiary weight.

The form from [REDACTED] also fails to specifically confirm the applicant resided in the United States for any portion of the requisite period. In addition, the form is unsigned and does not include an oath. As a result, it is accorded very little evidentiary weight.

The form from [REDACTED] also fails to specifically confirm the applicant resided in the United States for any portion of the requisite period. In addition, the form is unsigned and does not include an oath. As a result, it is accorded very little evidentiary weight.

The form from [REDACTED] also fails to specifically confirm the applicant resided in the United States for any portion of the requisite period. In addition, the form is signed but it does not include an oath. As a result, it is accorded very little evidentiary weight.

Lastly, the form from [REDACTED] states that the applicant was living in the United States from 1980 to 1989. However, [REDACTED] was in Senegal throughout the requisite period and could only confirm the applicant's residence indirectly, through knowledge of the fact that his father and the applicant's father were in "permanent contact" during that period. In addition, the form is unsigned and does not include an oath. As a result, it is accorded very little evidentiary weight.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, has submitted an affidavit and a signed declaration that fail to confirm he resided in the United States for any specific portion of the requisite period, and has submitted numerous written statements that are unsigned and do not contain an oath. Specifically, the affidavit from [REDACTED] and the declaration from [REDACTED] do not confirm the applicant resided in the United States for any specific portion of the requisite period. In addition, the forms from [REDACTED], and [REDACTED] all are unsigned and do not contain an oath.

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 its amenability to verification. Given the failure of the affidavit and declaration to specifically confirm the applicant's residence during the requisite period, 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.