



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 319 105310

Office: Columbus

Date: SEP 28 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:

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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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 district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates his claim of residence in the United States since prior to January 1, 1982 and asserts that he submitted sufficient evidence to support this claim. The applicant contends that he no longer possesses additional supporting evidence as a result of the significant passage of time and the fact that his father's home had been destroyed by fire in his home country of Sierra Leone. The applicant includes copies of previously submitted documents in support of his appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. See section 245A(a)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien 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 and 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits 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.

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 for Temporary Resident Status Pursuant to Section 245A of the Act and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 15, 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 claimed that he resided at [REDACTED] in New York, New York from September 1981 through at least the date of the termination of the original legalization application period on May 4, 1988. However, the applicant failed to submit any evidence to corroborate his claim of 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.

A review of the record revealed that the applicant previously submitted a Form I-589, Application for Asylum and for Withholding of Removal, to CIS on January 12, 2005. At part A.III.3 on page #4 of Form I-589 asylum application where applicants were asked to provide information relating to their education, the applicant indicated that he attended Prince of Wales High School in Freetown, Sierra Leone from September 1984 to June 1992. The record shows that the applicant signed the Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in such application and evidence submitted with it was true and correct. The fact that the applicant himself testified that he was attending school in Freetown, Sierra Leone from September 1984 through June 1992 on the Form I-589 asylum application negated his claim that he resided in the United States from prior to January 1, 1982 through the date he purportedly 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.

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. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On December 15, 2005, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit any evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he declared that he did not possess any documentation to support his claim of residence in this country for the requisite period because his late father had maintained such documentation as the applicant was a minor at that time. The applicant asserted that these documents were lost when his father's house was destroyed by fire during the recent civil war in Sierra Leone. While the applicant included a photocopy of his father's death certificate, he failed to present any evidence to corroborate his claim that his father's house had been destroyed by fire.

The applicant provided an affidavit that is signed by [REDACTED] declared that he known the applicant since his birth in Sierra Leone in 1971. [REDACTED] stated that the applicant's late father and late uncle had informed him that the applicant was living in the United States from 1982 to 1988. [REDACTED] noted that he communicated with the applicant's father by letter as well as conversations with friends traveling abroad until the applicant and his father returned to Sierra Leone in 1988. However, [REDACTED] failed to provide any specific and verifiable testimony

relating to the applicant's residence in this country since prior to January 1, 1982. In addition, [REDACTED] did not directly attest that the applicant resided in the United States in the requisite period, but instead admitted that his knowledge that the applicant had resided in this country from 1982 to 1988 was based on what the applicant's father, applicant's uncle, and friends had told him. Consequently, [REDACTED] testimony must be considered as insufficient because he testified as to what these individuals told him and he has no direct knowledge that the applicant had in fact resided in the United States since prior to January 1, 1982.

The applicant included an affidavit signed by [REDACTED] who indicated that he was the applicant's first cousin and that he and the applicant had grown up as children together in [REDACTED] Sierra Leone. [REDACTED] declared that the applicant left elementary school in 1981 to move to the United States. [REDACTED] stated that he and his father would travel to Freetown, Sierra Leone in order to call and speak with the applicant and his father by phone in the United States. While [REDACTED] claimed to have knowledge of the applicant's residence in this country since 1981, he failed to provide pertinent and relevant information that would corroborate the applicant's claim of residence in the United States during the period in question. In addition, the probative value of the [REDACTED] testimony is further limited as he has acknowledged that he is the applicant's first cousin, a family member who must be viewed as having an interest in the outcome of proceedings rather than an independent and disinterested third party.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on March 22, 2006.

On appeal, the applicant reaffirms his claim of residence in the United States since prior to January 1, 1982 and contends that he submitted sufficient evidence to support this claim. The applicant asserts that he no longer possesses additional supporting evidence as a result of the significant passage of time and the fact that his father's home had been destroyed by fire during the recent civil war in his home country of Sierra Leone. However, the applicant's own testimony in his Form I-589 asylum application directly contradicts his claim of residence in the United States from prior to January 1, 1982 through the date he purportedly 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, and instead establish that he was attending Prince of Wales High School in Freetown, Sierra Leone from September 1984 to June 1992. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty or more years ago, the mere passage of time is insufficient to explain the contradictory nature of the applicant's testimony.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the period in question. Further, the fact that applicant had previously provided direct testimony that he was attending school in Sierra Leone from 1984 to 1992 on the Form I-589 asylum application negates his claim of residence in the United States from prior to January 1, 1982 through the date he purportedly

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. 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. The applicant has failed to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence and his own contradictory testimony, 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 as required under section 245A(a)(2) of the Act. 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.