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U.S. Citizenship
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FILE: [Redacted]
MSC 05 348 14034

Office: WASHINGTON

Date:

AUG 28 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "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, Washington. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must 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 physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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, 431 (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 for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

AFFIDAVIT

- [REDACTED] submitted a notarized, but unsworn, witness statement dated 12/1/05 wherein he stated that the applicant has been personally known to him since 1981. The affiant further stated that sometime in 1987, the applicant and the applicant's uncle visited the affiant at his residence in Berrien Springs, MI. The affiant stated that the applicant and his uncle were returning from Catholic Relief Services in Kalamazoo, MI where they had gone to see the QDE in charge of legalization application filings, and that they had been “turned away.” The affiant provided no additional information.

APPLICANT'S SWORN STATEMENT

- The applicant provided a sworn statement dated January 30, 2007. In that document, the applicant stated as follows: he was born in Ghana on [REDACTED] he entered the United States without inspection from Canada in early 1981; he moved to Bronx, NY where he lived for three months; he then moved to Chicago, IL where he lived for five years; he then moved to Bronx, NY where he stayed for two years; he attempted to apply for

legalization at Catholic Relief Services in Kalamazoo, MI in the summer of 1987, but that he was turned away because he had briefly traveled to Canada in April of 1987; and that he has not been convicted of any misdemeanors or felonies that would render him inadmissible under immigration law.

LEGALIAZTION INTERVIEW NOTES

The record contains interview notes from the applicant's legalization interview signed by a United States immigration officer on September 28, 2006. During that interview, the immigration officer reports that: the applicant stated that he first entered the United States in January of 1981; the applicant stated that he left the United States on or about September 22, 1987 and returned to Ghana; the applicant stated that he returned to the United States in 1995 in route to Mexico to study; the applicant stated that he returned to the United States in 1996; the applicant stated that he first attempted to file for legalization in 1986, but that he was told he was not eligible because he did not have papers with him to prove his claims, which is why he returned to Ghana.

The applicant submitted no additional evidence in support of his Form I-687 application.

As stated earlier in this decision, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The evidence submitted by the applicant in support of his application consists of a single affidavit from [REDACTED] and the applicant's sworn statement. The [REDACTED] affidavit states that the affiant has known the applicant since 1981, and that the applicant visited him in 1987 after attempting to file a legalization application in Kalamazoo, MI. The affiant does not state that the applicant resided in the United States prior to 1982, or that he resided in the United States for any period of time. Further, the affidavit does not establish how the affiant came to know the applicant, or the nature of any relationship that the affiant may have had with the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavit, however, failed to provide detailed information establishing the extent of the affiant's association or relationship with the applicant, or detailed accounts of the affiant's ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. 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 his 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 the affidavit submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

As previously noted, 8 C.F.R. § 245a.2(d)(6) states that to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence will be judged according to its probative value and credibility. The applicant's sworn statement alone is insufficient to establish the applicant's eligibility for the immigration benefit herein sought.

It should further be noted that the record contains contradictory information which has not been explained. The applicant states in his sworn statement that he arrived in the United States without inspection early in 1981, and that the applicant then resided in Bronx, NY for three months, moved to Chicago, IL where he resided for five years, and moved back to Bronx where he resided for another two years. None of these addresses are listed on the applicant's Form I-687. The Form I-687 states that the applicant lived in Alexandria, VA from January of 1981 until October of 2000, and in Dumfries, VA from November of 2000 until the date of the application (September 13, 2005). The applicant stated to a United States immigration officer during the applicant's legalization interview that he left the United States on September 27, 1987 and returned to Ghana, and that he next entered the United States in 1995. The Form I-687 and the statement submitted by the applicant in support of the appeal, signed by the applicant under penalty of perjury, indicates that the applicant left the United States on only one occasion, from April of 1987 until June of 1987 to visit friends in Canada. These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's eligibility for the immigration benefit sought. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. 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 visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.