



U.S. Citizenship
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FILE: [Redacted]
MSC 05-237-15586

Office: NEW YORK

Date: DEC 02 2008

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-REPRESENTED¹

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

¹ Though the record contains a properly executed Form G-28 that indicates that [Redacted] is the applicant's representative of record, this Form G-28 indicates that [Redacted] is a member of the New York State bar, the AAO confirmed with the New York State Unified Court System that [Redacted] is currently suspended from practicing law. Therefore, the applicant will be considered self-represented for these proceedings. Accordingly, a copy of this decision will not be sent to [Redacted]

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, New York. 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He asserts that the director erred in her decision

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.

It is noted that the applicant was placed in removal proceedings on January 23, 1996. He was then ordered deported on February 11, 1997. He appealed this decision to the Board of Immigration Appeals and was granted voluntary departure until August 20, 2001.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of receipts and envelopes, a Social Security Administration Statement, affidavits, a Form W-2, and proof that [REDACTED] was ill in 1987. The record also contains applications and other documents submitted with previous applications that are relevant to the applicant’s residence during the requisite period. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant has submitted multiple affidavits from himself in support of his application. Collectively, these affidavits indicate that the applicant last entered the United States on March 11, 1987; that he visited his sick mother during the absence that preceded that entry; and that this absence began on February 20, 1987 and was for 45 days. However, as will be discussed further in this analysis, the applicant’s Form I-687 and his passport call that claim into question.

With his affidavits, the applicant submitted a document from Mount Sinai Hospitals, Ltd. This document states that [REDACTED] was diagnosed with a stroke on February 5, 1987 and that she was discharged on March 20, 1987. As this statement was submitted with the applicant’s affidavit in which he asserted that the purpose of his visit in Nigeria was to attend to his ill mother, it appears that this statement is regarding his mother.

However, it is noted that on page four the applicant’s Form I-589 in the record, which he signed under penalty of perjury in May of 1996, the applicant stated that his mother passed away in 1972.

Further, it is noted that the record contains a Form G-325A, signed by the applicant on January 7, 1994 and submitted with a Form I-130 filed by the applicant’s former United States Citizen wife, who subsequently withdrew that application. On the Form G-325A, the applicant stated that his mother’s name was [REDACTED] and that his former wife’s name was [REDACTED].

The applicant has not consistently stated the dates associated with his absence or absences from the United States, the purpose of his absence or absences, or the name of his mother and or of his former wife in Nigeria. This casts doubt on whether the applicant has absences that would constitute a break in his continuous residence in the United States during the requisite period.

The affidavit from [REDACTED] contains a statement that the affiant first met the applicant when he went home to Nigeria for a visit in 1979 or 1980. The affiant claims that the applicant resided with him from December 22, 1980 until April 1987 at [REDACTED] in New York for the duration of that time. However, the affiant does not state whether there were periods of time during the requisite period when he did not see the applicant. This is significant, as the record contains a passport issued to the applicant in 1980, which indicates that the applicant was present in Nigeria on at least one occasion for each year from 1982 until 1987. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

However, this witness statement does not provide concrete information, specific to the applicant and generated by the affiant's asserted association with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that this witness statement and the previously noted statements from the applicant do not indicate that their assertions are probably true. Therefore, they have little probative value.

The Social Security Statement from the applicant establishes that the applicant paid taxes on earned income in the United States beginning in 1987. Though this statement is probative of the applicant's residence in the United States since 1987, it does not offer proof of his residence in the United States before that time.

Similarly, the applicant has submitted his Form W-2 for work performed in 1988. Though this document is consistent with the applicant's claim that he worked in the United States in 1988, it does not carry any weight as proof of his continuous residence in the United States prior to that year.

The Form I-94 in the record indicates that the applicant entered the United States on March 11, 1987. While this form offers credible evidence that the applicant entered the United States on a date during the requisite period, it does not establish that the applicant resided in the United States either before or after that date.

The applicant has also submitted envelopes that are addressed to him in Greenbelt, Maryland. However, because the postmark dates are illegible, they will not be given any weight.

The record further contains the applicant's Form I-687, which was executed under penalty of perjury. This Form I-687 indicates that the applicant resided continuously in the United States in New York and in Takoma Park, Maryland for the duration of the requisite period. In the Form I-687, the applicant also stated that he

was only absent from the United States once during the requisite period, from December 12, 1986 until April 1987, when he went to Nigeria for a visit.

However, the record also contains a cancelled passport that was issued to the applicant in 1980. Stamps in this passport show that the applicant was present in countries other than the United States in 1982, 1983, 1985, 1986, and 1987. A visa on page 13 of this passport also indicates that the applicant proved to the United States Embassy in Lagos that he was an employee of Nigeria Airlines on January 5, 1982. However, the applicant did not state that he had ever worked for this airline during the requisite period on his Form I-687 application.

The inconsistency between the applicant's Form I-687, where he stated that he was only absent from the United States once during the requisite period, and his passport, which clearly shows his presence outside of the United States at least once each year from 1982 through 1987 casts doubt on his claimed continuous residence in the United States for the duration of the requisite period. Further, the dates associated with his claimed absence on his Form I-687 indicate that the applicant had a single absence from the United States that exceeded 45 days.

The evidence submitted by the applicant and information gained from records he previously submitted are contradictory regarding his absences in the United States during the requisite period. Further, the applicant's explanation for the purpose of his absence from the United States in 1987 is called into question, as he has claimed that it was to visit his mother. However, as was previously noted, the applicant stated that his mother passed away in 1972. Though the applicant questioned whether there was evidence in the record that he had stated that his mother passed away in 1972 on appeal, the AAO has found that the applicant did clearly indicate that she had passed away on his Form I-589. The applicant provided no explanation for those contradictions on appeal or prior to his appeal. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. 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 petitioner 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 application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.