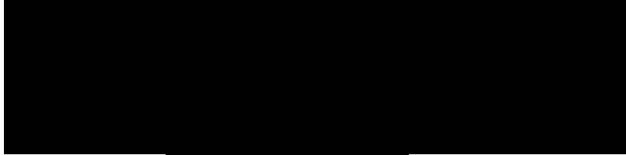


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FILE:

MSC 05 228 10995

Office: NEW YORK

Date:

FEB 04 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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, New York. The appeal will be dismissed.

The district director denied the application, finding the applicant failed to establish that he entered the United States before January 1, 1982, and thereafter continuously resided in the United States for the duration of the requisite period.

On appeal, counsel asserted that the director failed to adequately consider all of the evidence. More specifically, counsel argued that the district director had failed to accord adequate weight to the acquaintance affidavits submitted.

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 245A(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record contains (1) a form affidavit, dated November 29, 2005, from [REDACTED] (2) a form affidavit, dated February 18, 2006, from [REDACTED] (3) form affidavits, dated November 10, 2005 and February 22, 2006, from [REDACTED], (4) an undated statement from [REDACTED] (5) a letter dated January 22, 1988 from a nursing home in the Bronx, (6) a letter dated March 4, 1988 from the manager of a car wash in the Bronx, and (8) Naturalization Certificates showing that [REDACTED], and [REDACTED] became U.S. citizen on April 18, 1997, February 9, 1995 and April 21, 1995, respectively. The record contains no other evidence pertinent to the applicant’s presence in the United States during the salient period.

The November 29, 2005 affidavit from [REDACTED] states that the affiant first met the applicant on or about September 15, 1981 at a party in New York. It also states that the affiant previously knew the applicant in Ghana. [REDACTED] the applicant’s counsel, attested to the affidavit.

The February 18, 2006 affidavit from [REDACTED] states that the applicant is a family friend. It lists four addresses at which the applicant allegedly resided from April 1981 to the date of the

affidavit, but without detailing the basis of the affiant's knowledge of the dates during which the applicant resided at those addresses. The affiant failed to provide a telephone number in the space provided on that form appraisal. [REDACTED], the applicant's counsel, attested to that affidavit.

The November 10, 2005 form affidavit from [REDACTED] states that [REDACTED] first met the applicant on or about December 20, 1981 at a market in the Bronx. The affiant did not then mention having previously been acquainted with the applicant in Ghana. The affiant listed addresses at which the applicant has allegedly lived since their meeting and stated that he has been in touch with the applicant since then. [REDACTED], the applicant's counsel, attested to the affidavit.

The February 22, 2006 affidavit from [REDACTED] attests to essentially the same facts as the previous affidavit.

In his undated statement [REDACTED] attested to most of the same facts as in the affidavits from [REDACTED], but also states that he previously knew the applicant in Ghana.

That the affiant indicated, on the first affidavits, that he first met the applicant in New York, and then, on subsequent affidavits, stated that he previously knew him in Ghana, is inconsistent. 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. Further, the applicant must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The January 22, 1988 letter from the nursing home indicates that [REDACTED] had worked for that business for the previous four years.

The March 4, 1988 car wash manager's letter indicates that [REDACTED], not the applicant, worked for that business from August 1981 to May 1983. Although that letter was dated, and apparently signed, on March 4, 1988, counsel affixed a notary attestation to that letter on March 15, 1988, attesting to the authenticity of the car wash manager's signature. This office notes that attestation to the authenticity of a signature on a document other than at the time the document is signed is, at the very least, unusual. Again, 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.

In a Notice of Intent to Deny (NOID), dated February 1, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987. The director noted that the applicant had submitted no contemporaneous evidence in support of his claim of having entered the United States during April 1981 and that, in support of his claim of residence in the United States since then he had produced a single affidavit. The director granted the applicant thirty days to submit additional evidence.

In response counsel submitted the November 29, 2005 affidavit of [REDACTED] and the November 10, 2005 affidavit of [REDACTED] both of which are described above. In the Notice of Decision, dated July 31, 2006, the director denied the application based on the reasons stated in the NOID. The director also noted that [REDACTED] could not be reached at the telephone number he provided on his affidavits.

On appeal, counsel submitted the February 22, 2006 affidavit and the undated affidavit of [REDACTED], the February 18, 2006 affidavit of [REDACTED], the January 22, 1988 nursing home letter, the March 4, 1988 car wash manager's letter, and the naturalization certificates of [REDACTED] and [REDACTED] all of which are described above. Counsel argued that the evidence in the record demonstrates that the application should be approved. The new affidavit from [REDACTED] gave the same phone number for [REDACTED] as his previous affidavits.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status before January 1, 1982, through the December 31, 1987.

The employment letters submitted pertain to the employment of [REDACTED] and tend to support the assertion that he was in the United States during the salient period. The naturalization certificates also support the proposition that the applicant's affiants were in the United States during the periods when the affiants state the applicant was also here. They are very poor support, however, for the proposition that the information provided by the affiants is correct.

The record contains no contemporaneous evidence to demonstrate that the applicant was in the United States at any time during the salient period, from January 1, 1982 through December 31, 1987, let alone that he resided in the United States continuously during that period. The applicant claims to have been self-employed throughout the salient period and has, therefore, provided no evidence from employers of his residence in the United States from 1982 to 1987. The sole evidence upon which the application relies to support that proposition consists of acquaintance affidavits.

Counsel submitted five affidavits from three affiants. All of the affiants stated that they have known the applicant since 1981 and that the applicant has been a continuous resident of the United States since that time.

The affidavits from [REDACTED], as was noted above, conflict as to whether [REDACTED] first met the applicant in the United States or in Ghana. Further, that counsel attested to the signature on an affidavit on a date other than that upon which it was signed implies that counsel executed that attestation without witnessing the signature, and possibly without meeting the affiant. These irregularities greatly diminish the credibility of the affidavits submitted. Finally, as noted in the decision, [REDACTED] could not be reached at the telephone number he provided on the affidavit.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 paucity of credible supporting documentation he has failed to meet his burden of proof and 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.