



U.S. Citizenship
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FILE: [Redacted]
MSC 05 238 11620

Office: WASHINGTON, D.C.

Date: FEB 26 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-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.

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, D.C. 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 noted that the applicant testified that he first attempted to apply for amnesty under the legalization program in 1982, several years prior to the actual implementation of the program. 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 believes there was a misunderstanding regarding the testimony he gave during his interview and notes that he is unsure exactly when or how his late uncle attempted to legalize his status. The applicant submits a written statement and three affidavits in support of his claim that he continuously resided in the United States for the duration of the requisite period.

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on May 26, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he resided at [REDACTED] in Dallas, Texas from February 1981 until May 1987, at [REDACTED] from May 1987 until February 1991. He indicated that he last entered the United States in February 1981, without a visa. The applicant’s residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant failed to file with his application any corroborating evidence of his residence in the United States during the requisite period. The applicant provided a copy of his Nigerian passport as proof of his identity. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This

list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant was interviewed by a CIS officer on June 6, 2006. At the time of his interview, the applicant signed a sworn statement in which he indicated that he entered the United States in February 1981 without a visa and initially lived in Dallas. He stated that he believed that he attempted to file for amnesty in 1982 at the immigration office in Dallas, but that he was told the date had already expired. The applicant did not submit any documentary evidence to corroborate his claim of continuous residence at the time of his interview.

The director denied the application on August 17, 2006. In denying the application, the director observed that while the applicant claimed to have applied for the legalization program in 1982 and stated that he applied for amnesty under President Reagan, the legalization program did not in fact come into existence until 1986 under the Immigration Control and Reform Act of 1986. The director determined that the applicant did not establish by a preponderance of the evidence that he was eligible for temporary resident status under Section 245A of the Act, noting that the applicant did not establish that he met the residence, physical presence and admissibility requirements.

On appeal, the applicant asserts that he believes there was miscommunication between himself and the interviewing CIS officer. He states that he believes that he applied for legalization during the Clinton administration, that he did not know about an amnesty program during the Reagan administration, and that he has "no idea about the 1986 Control and Reform Act that the officer mentions." He asserts that he does not remember all of the efforts his uncle, [REDACTED], made in an attempt to legalize his status in the United States. The applicant states the he entered the United States on February 12, 1981 and has been here since that time. In support of the appeal, the applicant submits the following evidence:

- An affidavit from [REDACTED], who states that he has been a resident of the United States since 1976. [REDACTED] states that he has known the applicant's uncle and his family since he came to the United States as a student, which is how he knows that the applicant came in 1981 with a brother. He stated that the applicant's uncle tried to apply for his nephews to have legal documents so that they could go to school, but he did not succeed. Although [REDACTED] claims to have known the applicant in the United States since 1981, he provides no relevant details regarding the events and circumstances of the applicant's residence in the United States, such as where the applicant resided during the requisite period, which would lead to a conclusion that the affiant has direct, personal knowledge of the information to which he is attesting. He does not indicate how he first met the applicant or how frequently he saw him during the requisite period. Although he is not required to do so, it is noted that [REDACTED] did not provide proof of his identity or evidence that

he was residing in the United States during the requisite period. Because this affidavit is significantly lacking in detail, it can be given only limited weight as corroborative evidence.

- An affidavit from [REDACTED], who states that he has been residing in Cameroon since 1986. He states that the applicant is his cousin and that they traveled to the United States together on "2nd 12 1981" through Canada with the assistance of their late uncle, [REDACTED]. He indicates that they resided at [REDACTED] in Dallas, Texas. Mr. [REDACTED] states that although he returned to Africa, the applicant never returned home. Finally, he states that while he was in the United States, his uncle took him and the applicant to an INS office, but was unable to submit the documents he had for them. It is noted that the applicant indicated on his Form I-687 that he resided at [REDACTED] from May 1987 until February 1991. Therefore, [REDACTED] statement that he resided at this address with the applicant from 1981 to 1986 is inconsistent with the applicant's own testimony. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.*

Furthermore, [REDACTED] testimony that the applicant's uncle took him and the applicant to submit legalization applications during the requisite period is inconsistent with his testimony that he himself departed the United States in 1986, prior to the beginning of the original legalization application period. While [REDACTED] corroborates the applicant's claim that he entered the United States in 1981, he offers no other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend credibility to the affiant's claim that he resided with the applicant in the United States for much of the relevant period. Because Mr. [REDACTED] statement contains information that is inconsistent with the applicant's own testimony, and because it is otherwise lacking in detail, it has very little probative value.

- An affidavit from [REDACTED] a citizen of Cameroon who states that he worked as a Cameroon government representative in the Embassy of Cameroon in the District of Columbia before retiring and returning to Cameroon in 1995. He states that he met [REDACTED] in December 1982 and became a friend of his because [REDACTED] nephews were close friends with his son. [REDACTED] further states that [REDACTED] talked with him regarding adjusting his nephew's status, and that he had gone to the immigration department but was turned away and told to hire an attorney to assist him. He states that [REDACTED] nephew, [REDACTED] went to Cameroon in 1986, but that the applicant remained in the United States. Finally he states "I would acknowledge without any confusion that his nephews followed him in 1981 but I do not know the month and day." Mr. [REDACTED] does not claim to have direct, personal knowledge of the applicant's residence in the United States prior to December 1982. Although he claims to have known the applicant for over 20 years, he offers no relevant details regarding the events and circumstances of his residence in the United States, such as an address where he resided during the requisite period. He does not state how or where he met the applicant or indicate how frequently he saw him during the requisite period. This

omission is significant, as the applicant claims to have resided in Dallas, Texas, while the affiant only mentions that he lived in Washington, D.C. during his period of residence in the United States. Like the above-referenced affidavits, [REDACTED] statement is lacking in detail and probative value.

The regulations allow the applicant to submit a broad range of documents to satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). Based on the applicant's failure to provide any evidence to establish his continuous residence in the United States during the requisite period prior to the director's decision, the director correctly concluded that the applicant failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The documents now submitted by the applicant on appeal can only be given minimal weight because they lack significant detail, and are not uniformly consistent with his own testimony. Thus, the applicant has not demonstrated with relevant, credible and probative evidence that his claim is probably true pursuant to *Matter of E-M-, supra*.

In conclusion, the absence of sufficiently detailed, 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 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 for the requisite period 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.