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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



MSC-05-329-11727

Office: CINCINNATI

Date: JUL 25 2008

IN RE:

Applicant:



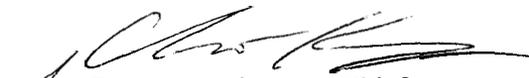
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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, Cincinnati. 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 on August 25, 2005. The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status pursuant to the terms of the CSS/Newman settlement agreements. The director also noted that the applicant had previously submitted an asylum application in which he claimed to have entered the United States on July 20, 1993. The applicant failed to mention any previous period of residence in the United States at any point during the adjudication of his asylum application.

On appeal, the applicant states that he had been advised by someone not to mention his previous residence in the United States on his asylum application. The applicant states that he first entered the United States in 1981, returned to Africa in 1988 and then re-entered to the United States on July 20, 1993. The applicant has not submitted additional evidence in support of his appeal.

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) 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. See 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).

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 applicant 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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 25, 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 first period of residence the applicant listed began in June 1997. At part #33 of the Form I-687 application, which asked for all employment in the United States since January 1, 1982, the first period of employment listed by the applicant began in June 1997. This detracts from the applicant’s claim to have resided in the United States continuously since 1981.

As noted by the director, the applicant previously filed an application for asylum. The applicant filed a Form I-589 Application for Asylum and for Withholding of Deportation in September of 1996. There the applicant listed his date of last arrival in the United States as July 20, 1993. The applicant testified before an asylum officer and before an immigration judge that he entered the United States on July 20, 1993. At no point did the applicant indicate that he had previously resided in the United States. This tends to indicate that the applicant first entered the United States in 1993.

As noted above, on appeal the applicant claims that he was advised not to disclose his previous residence in the United States on his asylum application. The applicant explains on the Form I-694 Notice of Appeal of Decision Under Section 210 or 245A that “I was in Africa from 1988 until when my Government expelled me and I went to Senegal where I remained until 07/20/1993 and came back to the United States.” However, the applicant did not list any such absence on his Form I-687 application. The applicant, when he was interviewed in connection with his Form I-687

application, testified under oath before an immigration officer that he departed the United States in August 1987 and returned to his native Mauritania where he remained until 1989. These inconsistencies detract from the credibility of the applicant's claim.

The applicant submitted the following in support of his application:

- Affidavit of _____ signed and notarized on December 19, 2005. The affiant states that he met the applicant in late 1981 at Mart 125th, and that the applicant was residing in Brooklyn, New York at that time. The affidavit lacks probative details such as how the affiant came to know the applicant, an address where the applicant resided in the United States, or the nature and frequency of the affiant's contact with the applicant during the requisite period. Given these deficiencies, this affidavit has minimal probative value in determining whether the applicant continuously resided in the United States throughout the requisite period.
- Letter on letterhead of Masjid Malcom Shabazz. The letter, which is not signed, states that the applicant attends Masjid Malcom Shabazz for religious services. The author of the letter does not claim to have any knowledge of the applicant's residence in the United States during the requisite period. Further, the letter fails to comply with the regulation for attestations by churches and other organizations in that it is not signed by an official, does not provide inclusive dates of membership, does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Given these deficiencies, this letter will be given no weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed 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 inconsistencies between the applicant's asylum application and his Form I-687 application and his reliance upon one document with minimal probative value, it is concluded that the applicant 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.