



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-05-334-11325

Office: NATIONAL BENEFITS CENTER

Date: JUN 23 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. 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.

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, National Benefits Center. 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 his claim of eligibility for temporary resident status.

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).

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).

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 or her 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 August 30, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestation:

- A declaration dated November 29, 2005 from [REDACTED] in which he stated that he has known the applicant for more than 20 years. Here, the declarant fails to indicate the circumstances under which he met the applicant. The declarant fails to demonstrate the frequency with which he saw the applicant during the requisite period. Although the declarant attested to the applicant's residence in this country, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted a copy of his Social Security Statement that lists his earnings in the United States from 1986 to 1989. The record of proceeding also contains copies of the applicant's B2 Visa issued to him in Lagos, Nigeria, on November 26, 1985, and his divorce decree that was issued to him in Lagos, Nigeria, by the High Court of Lagos State on January 12, 1986. The applicant submitted a Form I-485, Application for Status as Permanent Resident, in which he indicated at part #14 that he had three children that were born in Nigeria on September 25, 1982, October 17, 1984, and March 3, 1986.

This evidence demonstrates the applicant's presence in the United States in 1986 however it is insufficient to demonstrate his continuous unlawful residence in the country since before January 1, 1982, as claimed.

In denying the application the director noted that neither the affidavit nor the other dated evidence submitted was sufficient to establish the applicant's eligibility for the benefits sought.

On appeal, the applicant asserts that the photocopy of his passport indicates his entry into the United States on February 2, 1986, and that this information was never considered by the director in his decision. The applicant submits a photocopy of his passport and identification documents. He also submits the following attestation:

- A declaration from [REDACTED] in which he states that he has known the applicant since November of 1981 while they were both living in the same neighborhood. Here, the declarant fails to indicate the circumstances under which he met the applicant. The declarant fails to demonstrate the frequency with which he saw the applicant during the requisite period. Although the declarant attested to the applicant's residence in this country, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the issues raised by the director. The attestations submitted by the applicant are significantly lacking in detail, and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period, as claimed.

Finally, the record reflects that on December 19, 1988, the applicant was arrested by the Attleboro Police Department and charged with conspiracy to commit bank fraud and breaking and entering a bank at nighttime with intent to commit a felony in violation of Massachusetts State Law section C266 S16. The record of proceeding contains a final court disposition that shows that on December 12, 1997, the charges were dismissed. (Case number [REDACTED]).

It is further noted that the applicant was placed in removal proceedings on two occasions. He departed in voluntary status on January 10, 1989 and was ordered deported on July 7, 2004.

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 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.