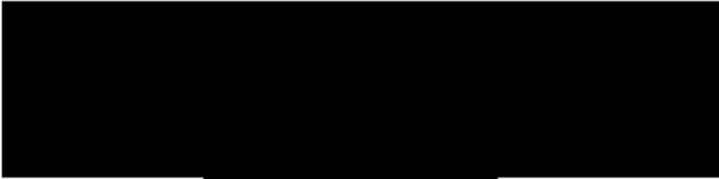


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U.S. Citizenship
and Immigration
Services

LI



FILE:



Office: NEW YORK

Date: **MAY 01 2008**

MSC-05-131-11550

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.

fa *Michael T. Kelly*
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 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 that he meets all of the criteria and conditions of eligibility under the provisions of the law.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on February 8, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] Bronx, New York, from November 1981 to April 1996 and his second address as [REDACTED], [REDACTED] Bronx, New York, from April 1996 to the present. At part #33, the applicant listed his first and only employment in the United States as a self-employed vendor in New York, New York from February 1984 to January 2005. The applicant stated that he was not employed from November 1981 to February 1984. At part #32, the applicant listed one trip outside of the United States from July 2003 to September 2003. At part #31, the applicant listed an affiliation with [REDACTED] from November 1981 to February 1990.

The applicant submitted the following documentation as evidence of residence during the requisite period:

- A notarized form-letter affidavit for [REDACTED] dated June 28, 2005. The affidavit states that [REDACTED] lives in Far Rockaway, New York, and has personal knowledge that

the applicant resided in the United States from 1981 to the present. [REDACTED] states that he has known the applicant since 1981. The statement lacks details that would lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A form-letter "Affidavit of Witness" for [REDACTED] dated June 15, 2005. This document states that [REDACTED] lives in Bronx, New York and has personal knowledge that the applicant resided in the United States from 1981 to the present. The declarant states that she has known the applicant since 1981. The statement is not accompanied by identification and it lacks any details that would lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit for [REDACTED], the applicant's father, dated September 13, 2005. The affidavit states that the applicant left for the United States from 1981 and has been "communicating and remitting regular allowance to me for the maintenance of his mother and myself." The declarant does not provide evidence that the applicant entered the United States in 1981 or that he resided in the United States for the entire requisite period. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter affidavit for [REDACTED] dated September 26, 2005. The affidavit states that [REDACTED] lives in Bronx, New York and has personal knowledge that the applicant resided in the United States from 1981 to the present. The declarant states that he met the applicant "years ago." The statement lacks any details that would lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter from the Secretary's Office of the [REDACTED] dated June 17, 2005. The letter is not signed and the applicant's name was filled into a blank. The letter states that the bearer of the letter attends services at [REDACTED] and requests that he be allowed to attend services on Friday at 1:00 p.m. This letter does not provide information regarding when the applicant entered the United States or of his

residence during the requisite period. Although consistent with the applicant's description of his affiliations or associations on the Form I-687 Application, the letter is not notarized. Moreover the letter fails to conform to regulatory guidelines in that it does not state the address where the applicant resided during the membership period or establish how the author knows the applicant. *See* 8 C.F.R. § 245a.2(d)(3)(v). The letter has no probative value for these reasons.

In addition, the record of proceeding includes copies of the applicant's passport issued on May 19, 2003 in Banjul; nonimmigrant visa issued July 30, 2003 in Banjul; social security card, employment authorization cards issued on April 8, 2005 and April 3, 2007; and New York State driver's license issued on June 24, 2005.

None of the evidence provided establishes that the applicant was physically present or had continuous residence in the United States during the requisite period or that he entered the United States before 1982.

The record of proceeding also includes a sworn affidavit of a Customs and Border Patrol (CBP) interview of the applicant on December 30, 2007. The applicant signed all five pages of the affidavit. In this affidavit, the applicant initially states that he entered the United States through the Canadian border in 1981 and left for the first time in July 2003. On page 3 of the affidavit, the applicant states that he left the United States for Gambia in 1990 in order to attend Gambia University and he then entered the United States with a nonimmigrant visa in 2003. This evidence is inconsistent with the applicant's Form I-687. In the Form I-687, the applicant includes one absence from the United States from July 2003 to September 2003. In the Form I-687, the applicant also included addresses in the United States from 1990 to July 2003 at part #30. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director issued a notice of intent to deny (NOID) on September 1, 2005 and denied the application for temporary residence on February 1, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On December 30, 2007, the applicant signed a sworn statement which included his answers to questions during an interview by the U.S. Customs and Border Protection at John F. Kennedy Airport. The applicant's sworn statement contradicts information provided by the applicant on the Form I-687. After answering several questions, on page 3 of the sworn statement, the

applicant states: "I will tell you the truth. I came to the United States in 1981, like I told you. I went back to Gambia in 1990. I attended Gambia University and received [a] B.S. degree in geography/development studies. I then returned to America with my visa in 2003." This information contradicts the information in the Form I-687 in that the form only includes one trip to Gambia in 2003. Furthermore, the applicant listed employment on the form I-687 from February 1984 to January 2005 as a self-employed vendor even though he was not physically present in the United States from 1990 to 2003. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant includes a statement, but does not provide additional information or evidence in support of the applicant's claim that he was physically present or had continuous residence in the United States during the required period or that he entered the United States prior to January 1, 1982. The applicant does not address the director's statements regarding the credibility of the affidavits submitted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.