

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000-2090
Washington, DC 20529

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

LI

[REDACTED]

JAN 23 2009

FILE:

[REDACTED]

Office: NEW YORK

Date:

JAN 23 2009

MSC 05 202 11279

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.

John F. Grissom, Acting 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 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. Specifically, the director noted that the applicant had submitted fraudulent documentation in support of his application, noting that the applicant submitted a letter from [REDACTED] which stated that the applicant had visited the Kelly Temple C.O.G.I.C. in 1981 to learn English as a second language. When contacted to verify this information, [REDACTED] stated that he signed no such letter. The director further noted that the applicant had submitted a letter from [REDACTED] who stated that the applicant requires physical therapy to work on his motor milestones and suffers mild gross motor developmental delay. The letter is dated November 15, 2005, references October, 1981, and is on the letterhead of Mount Sinai Hospital. When contacted to verify this information, Mount Sinai Hospital stated that it had no record of [REDACTED] ever having worked there. Finally, the director noted that by the applicant's own admission, he did not arrive in the United States before January 1, 1982.

On appeal, the applicant submits additional information and states that he is eligible for the immigration benefit sought. The applicant did not address the director's statements concerning the submission of fraudulent documentation.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The applicant submitted the following documentation in support of his claim:

- An unsworn statement from [REDACTED] on the letterhead of the Creator Central Baptist Church which states that the applicant visited his church in 1981 to learn English;
- A statement from Bishop [REDACTED] which states that the applicant visited the Kelly Temple C.O.G.I.C. in 1981 to learn English as a second language;

- A statement from [REDACTED] on the letterhead of Mount Sinai Hospital which indicates that the applicant was treated by [REDACTED]. The letter is dated November 15, 2005, and references the time period October, 1981;
- A notarized statement from [REDACTED] which states that he met the applicant in 1981 when the applicant was selling merchandise on the corner of [REDACTED] and that the two are friends; and
- The applicant presented two statements in support of his claim. One is dated March 5, 2007, and is neither sworn to nor notarized. In that statement, the applicant states that he is eligible for the immigration benefit sought, and that he entered the United States in 1981 and has stayed here during the statutory period. A second statement dated March 15, 2006 is sworn to and states that the applicant first came to the United States when he was 17 years of age. The applicant states that he was born [REDACTED]

The record contains material inconsistencies which are fatal to the applicant's claim. As previously noted, the applicant presented statements from [REDACTED] which have been determined to be fraudulent by United States Citizenship and Immigration Services. The applicant submitted a sworn statement indicating that he came to the United States when he was 17 years of age, and that he was born on [REDACTED]. Based upon this information, the applicant could not have come to this country until March 8, 1982, not 1981 as stated by the applicant. The applicant has not sought to explain the director's determination that the applicant submitted fraudulent documentation in support of his claim. The applicant has not offered any plausible explanation as to how he could have entered the United States in 1981 when he swore that he entered when he was 17 years of age, and he did not turn 17 until 1982. For these reasons, the application must be denied. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

The applicant submitted a notarized statement that states that the witness has known the applicant since 1981, but provides no additional details about the applicant's residence or activities during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced affidavit states generally how the affiant knows the applicant, and that the affiant has known the applicant since 1981. The witness statement provides no additional relevant information. The affidavit does not provide concrete information, specific to the applicant and generated by the asserted association with him, that would reflect and corroborate the extent of that association and demonstrate that it is a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the witness statement/affidavit submitted by the applicant does not indicate that its assertions are probably true. Therefore, the affidavit is of little probative value. For this additional reason, the application may not be approved.

The only other evidence submitted by the applicant is the unsworn statement of K.B. Wells which indicates that the applicant came to the Creator Central Baptist Church in 1981 to learn English. The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
 - (A) Identifies applicant by name;
 - (B) Is signed by an official (whose title is shown);
 - (C) Shows inclusive dates of membership;
 - (D) States the address where applicant resided during membership period;
 - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
 - (F) Establishes how the author knows the applicant; and
 - (G) Establishes the origin of the information being attested to.

The attestation does not establish how its author knows the applicant, nor does it establish the origin of the information being attested to (i.e., the information is taken from church membership records). The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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 his claim. As previously stated, 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 during the requisite period.

Therefore, based upon the foregoing, 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.