

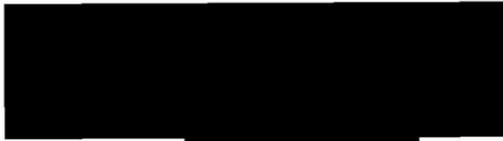
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHARLOTTE

Date: NOV 20 2009

MSC 05 355 12945

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Perry Rhew
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, Charlotte, North Carolina. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On appeal, counsel for the applicant submits a brief.

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).

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.* 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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record shows that the applicant filed the current Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on September 20, 2005.¹ The director denied the application on February 23, 2008.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he continuously resided in the United States in an unlawful status throughout the requisite time period.

The applicant, a native and citizen of the Democratic Republic of the Congo, or DRC (formerly Zaire), claims to have initially entered the United States with a photo-switched passport belonging to another person in May 1981, and to have departed the United States to the DRC on two occasions – from June to July 1987 (at which time he again re-entered with a photo-switched

¹ The record reflects the applicant initially submitted a Form I-687 with the Miami Office of the Immigration and Naturalization Service (now United States Citizenship and Immigration Services, or USCIS) on February 6, 1992.

passport) due to a family death and from July to August 1988 for a family visit (at which time he re-entered as a non-immigrant visitor for pleasure using his own passport).

In an attempt to establish his continuous unlawful residence in this country since prior to January 1, 1982, through 1988 the applicant has provided the following documentation in support of his claims:

1. A fill-in-the blank affidavit dated January 29, 1992, from [REDACTED] stating he had known the applicant for more than six years and the applicant had resided in North Carolina since May 1981.
2. A fill-in-the-blank affidavit dated January 31, 1992, from [REDACTED] and a letter dated April 6, 1998, from [REDACTED] (the applicant's sister and brother in-law) stating they drove the applicant to JFK airport in New York in June 1987 to catch a flight to Kinshasa in order to attend his brother's funeral and that they picked him up from the airport when he returned to the United States the following month.
3. A fill-in-the-blank affidavit dated February 3, 1992, from [REDACTED] stating he had known the applicant for more than ten years and that the applicant had worked for him as a taxi driver from 1981 to June 1991. The affidavit provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.
4. A hand-written letter dated February 5, 1992, from [REDACTED] stating that she hired the applicant to do home renovations for her from early October to mid-November (no year specified).

The record also contains a photocopy of the applicant's passport and his original Form I-94 Arrival/Departure Record indicating that he entered the United States as a non-immigrant visitor for pleasure (B-2) on August 9, 1988, with authorization to remain until February 8, 1989. It is further noted that the record contains a Form G-325, Biographic Information Sheet, signed by the applicant on August 1, 2002, indicating his last address outside of the United States for more than one year was in Kinshasa from July 1974 to June 1988.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries – other

than his entry in August 1988; children's birth certificates; bank book transactions; letters of correspondence; a Social Security card; automobile, contract, and insurance documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period.

It is noted that there are also some discrepancies in the record that have not been satisfactorily explained. First, in his affidavit, the applicant's brother-in-law, [REDACTED] (in No. 2, above) also states that the applicant "...was doing none [sic] activities because he was illegal..." from the date of his entry in 1981 through 1988 when he traveled to the DRC for his brother's funeral. However, the applicant and [REDACTED] (No. 3) have stated that the applicant worked as a taxi driver from 1981 to 1991. On appeal, counsel unsatisfactorily attempts to explain this discrepancy by asserting that [REDACTED] did not have knowledge that the applicant was working because the applicant did not disclose this information to him. Second, the record reflects that the applicant has a daughter born in the DRC on January 30, 1986, while the applicant claims to have not departed the United States since his initial entry in 1981 through his first departure in 1987. When confronted with this discrepancy, the applicant unsatisfactorily attempted to explain that his daughter's mother was his girlfriend who had been living in the United States and had returned to the DRC. No evidence of the mother's presence in, or departure from, the United States has been submitted.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous unlawful 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 and the discrepancies noted, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.