



U.S. Citizenship  
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FILE:

[REDACTED]

Office: NEW YORK CITY

Date:

**OCT 16 2009**

MSC 05 075 10141  
MSC 08 089 11165 – APPEAL

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.

Perry J. 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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Jamaica who claims to have lived in the United States since June 1981, 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 December 14, 2004. The director denied the application, finding 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 the applicant asserts that he has submitted sufficient credible evidence to establish he meets the continuous unlawful residence requirement for the requisite period. The applicant does not submit additional evidence with the 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).

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. 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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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. Here, the applicant has failed to meet his burden.

The record reflects that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status, other documents in file show otherwise. On a declaration by the applicant on September 24, 2004, the applicant stated that he entered the United States on or about June 1981 without inspection and that he has resided continuously and unlawfully in the country since September 1988. The applicant stated that he traveled briefly outside the United States without prior authorization in June 1987 and re-entered in July 1987, and again in August 1988 and returned in September 1988. Both trips were to Jamaica for family emergencies.

On the Form I-687 he filed in December 2004, the applicant indicated that he made three trips outside the United States to Jamaica during the 1980s. The first trip was from July to August 1982, the second trip was from June to July 1984 and the third trip was from April to May 5, 1986. The applicant did not indicate any other trips outside the United States during the 1980s.

On a Form I-360 (Petition for Amerasian, Widow or Special Immigrant) filed on behalf of the applicant on April 11, 1997, the applicant indicated that he has ten children, all born in Jamaica. Four of his children – [REDACTED] and [REDACTED] – were born during the 1980s. There is no evidence in the record to show that the applicant's wife was residing in the United States with the applicant during the 1980s and none of the applicant's indicated absences from the United States during the 1980s accounted for the conception of these children in Jamaica. Therefore, the dates of births of the applicant's four children in Jamaica strongly suggest that the applicant was residing in Jamaica at the same time he claimed to have been in the United States.

The applicant submitted a letter from [REDACTED] of Jamaica Central Labour Organization in Washington, D.C. dated October 1, 2007. The letter shows that the applicant made several legal entries into the United States under the H-2A Farm Work Programmes by Northern Orchards, United States Sugar Corporation, Florida Fruit & Vegetable Association and Chazy Orchards, beginning October 31, 1975 through October 18, 1988. The letter is credible evidence to show that although the applicant entered the United States before January 1, 1982, he entered with legal authorization and remained in the United States for short periods time following each entry. For example, the letter indicates that the applicant was recruited by Northern Orchards, New York, on September 7, 1987, that he was transferred to United States Sugar Corporation, Florida on October 24, 1987, and that he was repatriated on March 26, 1988, upon completion of the contract. This information on the letter is corroborated by records from United States Citizenship and Immigration Services (USCIS) Non Immigrant Information System (NIIS). According to the record in NIIS the applicant was admitted into the United States on September 7, 1987, as an H2 and that he departed the United States on March 25, 1988. The next record of the applicant in NIIS shows that the applicant was admitted into the United States on September 5, 1988, as an S9. No departure has been recorded following the September 2, 1988 entry. Therefore, the applicant has failed to establish that he resided continuously in the United States in an unlawful status through the requisite period.

It is abundantly clear from the record that the applicant has submitted conflicting information in support of his application and has failed to establish that he meets the continuous unlawful residence requirement for the requisite period. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, it must be concluded that the applicant has failed to establish his claim of continuous unlawful residence in the United States for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.