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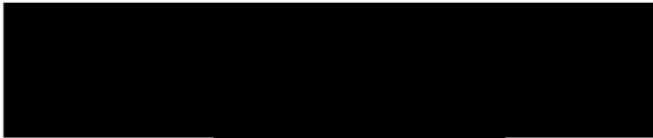
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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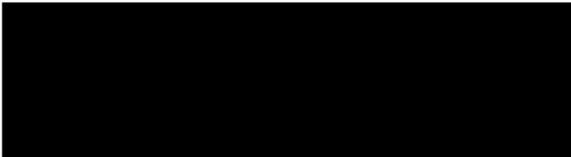
SEP 22 2009

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. 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 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 Nigeria who claims to have lived in the United States since October 1979, 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 November 21, 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous unlawful residence requirement for the duration of the requisite period.

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. The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A photocopy of a degree from The Atlanta University showing that the applicant was conferred the degree of Master of Business Administration by the University on May 18, 1981.
- A photocopy of course of studies from the University of Atlanta showing the courses taken by the applicant for the 1980/1981 academic year. The form also

shows that the applicant was conferred a degree of Masters of Business Administration on May 18, 1981.

A photocopy of an affidavit by [REDACTED] from The Atlanta University attesting that he has known the applicant since 1979 and that the applicant graduated from the institution in May 1981.

- A photocopy of a firearm license issued to the applicant on October 19, 1981.
- A photocopy of a Taxicab license issued to the applicant by the City of Atlanta dated April 27, 1982.
- A photocopy of a student identity card issued to the applicant by The University of Atlanta for the 1979/1980 academic year.
- A photocopied letter from [REDACTED] of National Cab Company in Atlanta, Georgia, dated September 24, 2007, stating that the applicant was an independent driver affiliated with the company from March 1987 to December 1995.
- A letter from [REDACTED] a resident of Loganville, Georgia, dated September 25, 2007, stating that he has known the applicant since 1981, that they lived together from 1981 through 1987, and that they “make contacts with each other at least once every week.”

The AAO has reviewed each document in its entirety to determine the applicant’s eligibility.

The AAO determines that the school records from The Atlanta University, the copy of the firearm license, and the Taxicab license from the City of Atlanta with an issue date of April 27, 1982, and other documents attesting to the applicant’s residence in the United States from 1981-1982, are sufficient credible evidence to establish that the applicant resided and was physical present in the United States during part of the statutory period – from 1979 through 1982. The AAO will focus its analysis in this proceeding on evidence submitted by the applicant in support of his continuous unlawful residence and physical presence in the United States for the years 1983 through the date of filing the application – which consists primarily of letters from individuals who claim to know the applicant in the United States during the 1980s.

The record reflects that the applicant provided conflicting information regarding his continuous unlawful residence in the United States through the requisite period. On the Form I-687 the applicant filed on November 21, 2004, the applicant indicated that he resided continuously in the United States from before January 1, 1982 through the requisite period except for a brief trip outside the United States to Canada from July to August 1987. The applicant did not indicate any other trips outside the United States during the 1980s.

On the Form I-485 (application to register permanent resident or adjust status) which the applicant filed on October 4, 2001, the applicant indicated that has two children born in Nigeria on September 27, 1985 and November 26, 1986. On the Form G-325A (Biographic Information) which the applicant completed on September 17, 2001 and submitted with the Form I-485, the applicant indicated that he was married in Lagos, Nigeria on December 14, 1985. The applicant did not submit any credible documentation and the record does not reflect that the applicant’s wife was

residing in the United States during the 1980s to account for the conception of the applicant's two children. In his affidavit dated September 26, 2007, the applicant claims that his wife visited him several times in the United States, that she became pregnant during the visits and that she traveled to Nigeria to deliver the children. The applicant also submitted an affidavit from [REDACTED] [REDACTED] sworn to on September 25, 2007, in Kano, Nigeria, stating that the applicant is her husband, and that she made various trips to the United States prior to 1998. Neither the applicant nor [REDACTED] provided specific dates of her visits nor did they submit any documentation to establish her entries into the United States. Thus, the affidavits do not adequately reconcile or justify the discrepancies in the applicant's continuous residence in the United States. In addition, the applicant did not address his marriage in Lagos, Nigeria on December 14, 1985. In the absence of any objective evidence to the contrary, the births of the applicant's two children in Nigeria in September 1985 and November 1986, and the marriage of the applicant and his wife in Nigeria in December 1985, strongly suggest that the applicant was in Nigeria at the same time he claims he was residing and physically present in the United States. The contradictions cast grave doubts on the veracity of the applicant's claim that he continuously resided in the United States from before January 1, 1982 through the date of filing the application.

The record reflects that on the Form I-687 the applicant filed on November 21, 2004, the applicant did not provide information about his residential address(es) in the United States from 1983 to 1999. The omission of this crucial information casts further doubt on the applicant's claim of continuous unlawful residence in the United States from 1983 through 1999.

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. *See 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.* The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant as evidence of his continuous residence in the United States from before January 1, 1982 through the requisite period is suspect and not credible.

The record includes a letter from National Cab Company in Atlanta, Georgia, dated September 24, 2007, stating that the applicant was an independent driver affiliated with the company from March 1987 to December 1995, with an approximate monthly income of \$3,000.00. This letter is suspect because the applicant did not indicate any relationship with National Cab Company on the Form I-687 he filed on November 21, 2004 or at any other time. The applicant only indicated an affiliation with [REDACTED] in Bronx, New York. Thus, the letter from National Cab Company has little probative value.

The record also includes a letter from [REDACTED] stating that he has known the applicant since 1981 and that he and the applicant resided together from 1981 to 1987. This letter had minimalist format with very few details about the applicant's life in the United States such as where he worked and the nature and extent of his interaction with the applicant over the

years. [REDACTED] did not provide firsthand information about the circumstances of the applicant's residence in the United States during the requisite period. [REDACTED] claims that he and the applicant resided together for about six years, but he did not provide their address(es) of residence for those years. [REDACTED] did not provide any document of his own identity and residence in the United States during the 1980s. The letter is not accompanied by any documentary evidence – such as photographs, letters, and the like – of [REDACTED] personal relationship with the applicant in the United States during the 1980s. Furthermore, the record reflects that the applicant has provided conflicting and contradictory information about his continuous residence in the United States, therefore, the letter from [REDACTED] attesting to the applicant's residence and presence in the United States from 1981 to 1987 is suspect. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, the letter has little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and documentation in support of his application. The applicant has failed to submit any objective evidence to explain or justify the contradictions in the record. Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through 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.

Based on the foregoing analysis of the evidence in the record, the AAO finds that 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.