



U.S. Citizenship
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Services

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FILE:



Office: CHICAGO

Date:

JAN 15 2010

MSC-07 139 10966

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.

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 Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Cameroon who claims to have lived in the United States since July 1980, 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 January 11, 2006. 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 adequately 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 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. Here, the applicant has failed to meet his burden.

The AAO determines that some of the documentation in the record such as, the letter from the Social Security Administration indicating that the applicant earned income from 1986, a letter from [REDACTED] of Admissions and Registration from Harold Washington College in Chicago, Illinois, as well as other documents attesting to the applicant's presence and residence in the United States from 1986, are sufficient credible evidence to establish that the applicant resided and was physical present in the United States during part of the requisite period – from the fall of 1985 through the date of filing the application. The AAO will focus its

analysis in this proceeding on evidence submitted by the applicant in support of his residence and physical presence in the United States from before January 1, 1982 through the fall of 1985.

The record includes a series of envelopes addressed to the applicant at the addresses he claimed in the United States during the 1980s, some with illegible postmark dates as if altered by hand, and others with contradictory address. For example, a copy of the envelope addressed to the applicant at "[REDACTED]" with a postmark date in 1980 does not appear to be genuine because the address on the envelope is inconsistent with the address claimed by the applicant for the same period. The applicant indicated his address as [REDACTED], from July 1980 to March 1981.

The inconsistency noted above calls into question the credibility and reliability of this envelope as well as the other envelopes in the record as credible evidence of the applicant's continuous residence in the United States 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.*

None of the envelopes bear United States Postal Service date stamps or other markings to show that they were received and processed in the United States before delivery to the applicant. Thus, the envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The record includes affidavits from individuals who claim to have resided with or otherwise known the applicant during the 1980s. They have minimalist or fill-in-the-blank formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by any documentary evidence of the authors' personal relationships with the applicant in the United States during the 1980s. The affiants do not seem to have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States. Some of the affidavits are in direct conflict with information provided by the applicant on his application.

For example, [REDACTED] claims that she knew the applicant resided in the United States since 1983 because she and the applicant used to work together at [REDACTED] in Evanston, Illinois, for several years when the applicant was a student. This affidavit is contrary to the employment information provided by the applicant. The applicant never claimed [REDACTED] as any of his employers in the United States. The applicant indicated his employer during the same period as [REDACTED] in Chicago, Illinois, from January 1982 to December 1985. Additionally, the applicant did not begin studies in the United States until the fall of 1985. Therefore, the affidavit from [REDACTED] is not credible.

As previously stated, doubt cast on any aspect of the applicant's evidence will reflect on the reliability of other evidence in the record. *Matter of Ho., id.*

The affidavits from [REDACTED] and [REDACTED] claim that they knew the applicant resided in Chicago, Illinois, from 1980 to 1990 and in Orlando, Florida, from 1990. They further claim that the applicant lived with them from 1980 to 1981 and from 1981 to 1986, respectively. However, the affiants did not specify the address, and did not provide any documents to establish their own identities and residence in the United States during the years indicated above much less for the requisite period.

As for the remaining affidavits, the affiants did not provide documents to establish their identities and residence in the United States during the requisite period. Based on the substantive deficiencies and apparent contradictions discussed above, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the date of filing the application.

As discussed above, the applicant has provided conflicting statements and documents in support of his application. The applicant did not provide objective documents to clarify or reconcile the contradictions. Therefore, the remaining documents in the record consisting of – a merchandise receipt with hand written notation of the applicant's name and no address, allegedly issued on May 10, 1983 – is suspect and not credible.

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.

Although the applicant has provided sufficient credible evidence of his residence and physical presence in the United States from the fall of 1985 through the date of filing the application, he has failed to provide sufficient credible evidence to establish by a preponderance of the evidence his continuous unlawful residence and continuous physical presence in the United States from before January 1, 1982 through the requisite period. Thus, 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.

The AAO notes that the applicant was arrested by the Chicago, Illinois Police and charged with one count of Battery. The complete court record is not in the record. The decision to deny the applicant is not based on the applicant's criminal record.

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