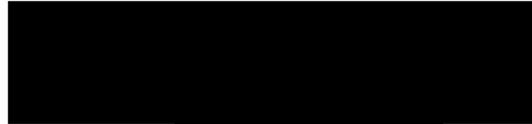




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



21

FILE: [REDACTED]
MSC 05 168 12238

Office: NEW YORK

Date: **AUG 02 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant states that he tried to get a photocopy of his expired passport that he used in 1981 to come to the United States, but he learned that expired passports are only kept for three or four years before they are destroyed. He submits a personal affidavit and an affidavit from the Director of the Border Police of Mali to corroborate his statement.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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).

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 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 17, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] New York, New York” from February 1981 to November 1990 and at [REDACTED] New York, New York” from November 1990 to December 1999. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he was a self-employed street vendor, but he did not identify where he sold his goods.

At his interview with a CIS officer on January 23, 2006, the applicant stated that he first came to the United States in February 1981. He further stated that he was in Mali from May to July 1987 due to the death of his father.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated March 10, 2005, from [REDACTED] of the [REDACTED] located at [REDACTED] New York, New York.” [REDACTED] stated that the applicant lived in the [REDACTED] from February 1981 to November 1990. It is noted that the applicant submitted an affidavit from a friend, [REDACTED] in which [REDACTED] states that the [REDACTED] closed its doors in 1989. The applicant has not explained how he was able to obtain an affidavit on Hotel Bryant letterhead stationery in 2005 when the hotel is no longer in business and hasn’t been since 1989.

The applicant included an affidavit dated March 10, 2005, from [REDACTED] stating that the applicant lived with him at the [REDACTED] from February 1981 to November 1990. However, [REDACTED] did not provide any information as to how he met the applicant.

The applicant provided a letter dated February 7, 2005, from [REDACTED], Secretary of [REDACTED] located at [REDACTED] New York, New York. [REDACTED] stated that the applicant was affiliated with [REDACTED] from November 1981 to January 1999.

On February 17, 2006, the district director informed the applicant of her intention to deny the application because the applicant had not submitted sufficient credible evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim of continuous residence in the United States during the requisite period.

The applicant, in response, submitted a letter dated Mach 3, 2006, from [REDACTED] Neurology Department, Harlem Hospital located at [REDACTED] New York, New York, stating:

According to our old records, they indicated that the above person Mr. Almou Aboubacrine was indeed an ex-outpatient in our emergency services unit as a patient in 1984, he was complaining about chronic cases of flu symptoms, but he manifested serious cases diarrhea and gastro-intestinal inflammation; he also had neurological testing in our hospital he came in with his friend, for a complete check up and an immediate diagnostic treatment, his condition was serious then.

He was sent home after a week stay and then was ordered to stay in bed for a full month. From time to time he would come for a follow-up check. I was then in charge as Patient Financial Service Representative of his account and billing for the treatments he received.

[REDACTED]

If you need financial assistance, please call Hospital Care Investigator, [REDACTED]
at [REDACTED]

Yours truly,

[signature of [REDACTED] appears here]

Patient Financial Service Representative
[REDACTED]

Sincerely,

[REDACTED]
Neurology Department.

This does not appear to be an authentic letter from Harlem Hospital. The letterhead is not on original Harlem Hospital stationery, but rather is photocopied. Furthermore, there is a discontinuity in the text of the letter. The text of the letter from "According to our old records" through "He was sent home after a week stay and then was ordered to stay in bed for a full month" appears to be from [REDACTED]. The portion of the letter beginning with the sentence "I was then in charge as Patient Financial Service Representative. . . ." and ending with the signature of [REDACTED] which is photocopied and not an original signature, appears to have been taken from an original letter from [REDACTED] and pasted into the letter from [REDACTED]. This sudden shift from [REDACTED]'s statement regarding the applicant's medical treatment to [REDACTED]'s statement that she was in charge of patient billing in the same letter, even in the same paragraph, is highly suspicious. Therefore, this letter will be accorded no evidentiary weight.

The applicant also submitted a letter dated March 6, 2006, from [REDACTED] of the Pan African Islamic Society, headquartered in Gambia but with a United States liaison office located at [REDACTED]. [REDACTED] stated in the letter that the applicant had regularly prayed at his mosque from 1983 to 1986.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include 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 letter from [REDACTED] does not meet this standard. The imam does not list the applicant's addresses in the United States during the period from 1983 to 1986. It is noted that the applicant did not indicate on the Form I-687 that he was affiliated with the Pan African Islamic Society during the requisite period. Rather, he stated that he was affiliated with [REDACTED] during that period.

The applicant included an affidavit dated March 2, 2006, from [REDACTED] of Montreal, Canada. [REDACTED] stated that the applicant spent 10 days visiting him in Canada in 1987. [REDACTED] stated that he drove the applicant back to New York via the Buffalo, New York, port of entry. [REDACTED] further stated, "We drove almost 14 hours before arriving at New York City (Queens), where we went to my childhood friend, [REDACTED] U.S. citizen. Even stayed with him and his family for few days then [REDACTED] Aboubacrine moved to another section of Manhattan. It was a cold day of late December 1981." It is noted that the notary seal on this affidavit is not original but rather is a photocopy of an original seal. Furthermore, there is a contradiction in [REDACTED]'s statements in this affidavit. First he stated that the applicant came to visit him in Canada in 1987. Then he stated that it was in "late December 1981" when he drove the applicant back to New York. Furthermore, the applicant indicated on the Form I-6897 that he was in Mali from May 1987 to July 1987 to bury his father. He did not list any trips to Canada in 1987 on the Form I-687. The applicant has not provided any explanation for these discrepancies.

The applicant provided an affidavit dated March 9, 2006, from [REDACTED]. [REDACTED] stated that he first met the applicant on June 14, 1982 through a mutual friend at an art trade show. [REDACTED] further stated that he subsequently visited the applicant at the [REDACTED] which closed its doors in 1989.

On appeal the applicant states that he tried to obtain a copy of the Mali passport he used in 1981 to enter the United States, but he learned that expired passports are destroyed after three to four years. He submits a "Certificate of Unsatisfactory Search" dated May 10, 2006, from the General Controller, name not provided and signature not legible, stating that he was unable to find the applicant's passport issued in 1981.

The applicant also submits a personal affidavit in which he states that the first address in the United States was [REDACTED], at Harlem." This statement contradicts his statement on the Form I-687 that he resided at [REDACTED] New York, New York" from February 1981 to November 1990. The applicant has not provided any explanation for this discrepancy.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from eight people concerning that period, all of which either lack credibility or fail to provide sufficient verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous 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 contradictory statements on his applications and his 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 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.

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