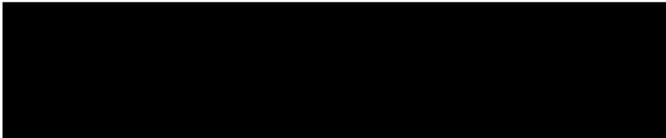


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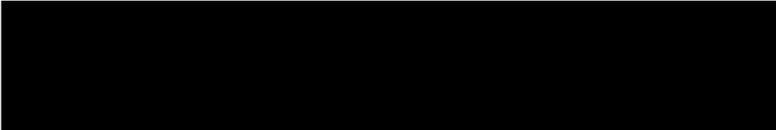
Applicant:



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 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, Cleveland, Ohio, 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 was only 14 years old when he first entered the United States in 1980, and most of his affidavits were provided by persons who were acquainted with his father who "traveled to the USA for business purposes."

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 16, 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 1980 to 1989 and at [REDACTED] New York, New York” from 1989 to 1990. At part #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Senegal visiting his family from May to June 1989.

At his interview with a CIS officer on February 27, 2006, the applicant stated that he last entered the United States in 1980 at age 14 with his father. He claimed that he lived in New York, New York until his departure in May 1989 to return to Senegal.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated March 1, 1990 from [REDACTED] [last name not provided], who identified herself as a realty agent. [REDACTED] stated that the applicant was residing in a

house located at "[REDACTED], New York, New York" from 1980 to December 1989, when he moved to the Bronx. [REDACTED]'s statement contradicts the applicant's statement on the Form I-687 that he resided at "[REDACTED], New York, New York" from 1980 to 1989. It is noted that a Service officer called the telephone number on the letterhead in an attempt to verify the information provided by this affiant, but the telephone number on the letterhead of the affidavit was not in service.

The applicant also submitted a letter dated February 21, 1990, from [REDACTED] who identified himself as the Public Information Officer for Masjid [REDACTED] located at [REDACTED] [REDACTED] et, New York, New York." [REDACTED] stated that the applicant had been affiliated with his mosque since January of 1981.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches or other religious organizations 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 because he did not provide the applicant's addresses during the requisite period.

The applicant included an affidavit dated March 12, 1990, from [REDACTED] [REDACTED] stated that he and the applicant are friends. He attested that the applicant resided at [REDACTED] [REDACTED], New York, New York" from July 1981 to April 1989. This statement contradicts the applicant's statement on the Form I-687 that he resided at "[REDACTED], New York, New York" from 1980 to 1989. Furthermore, [REDACTED] did not provide any information regarding the basis of his acquaintance with the applicant. Additionally, this affidavit appears to have been altered. Therefore, this document will be accorded little evidentiary weight.

The applicant included a separate affidavit from [REDACTED] dated March 12, 1990. Mr. Mens stated in this affidavit that he had personal knowledge that the applicant had resided in the United States since November 1981. [REDACTED] further stated that he could to this information because he and the applicant resided in the same apartment building, located at "[REDACTED] Street, New York, New York" during the requisite period. As previously stated, this statement contradicts the applicant's statement on the Form I-687 that he resided at [REDACTED] New York, New York" from 1980 to 1989.

The applicant provided an affidavit from [REDACTED] a resident of Toronto, Canada. [REDACTED] stated that the applicant came from the United States to visit him in Canada on May 16, 1987. [REDACTED] did not provide any information as to the date the applicant departed Canada to return to the United States. The applicant did not list an absence outside the United States in May 1987 on the Form I-687. The only absence from the United States listed by the applicant on the Form I-687 was a family visit to Senegal from May to June 1989.

The applicant also provided an affidavit dated March 12, 1990, from [REDACTED] who listed his address as "[REDACTED] New York, New York" stated that he had personal knowledge that the applicant had been in the United States since 1981. [REDACTED] further stated that he could attest to this information because the applicant "was living in the same building with me, until we moved to apartment [REDACTED] in January 1987." However, [REDACTED] statement contradicts the applicant's statement on the Form I-687 that he resided at [REDACTED] New York, New York" from 1980 to 1989.

The record contains a copy of a Form I-687 signed by the applicant on March 28, 1990. The applicant stated on this application that he resided at "[REDACTED] New York, New York" from November 1980 to December 1989 and at "[REDACTED] New York, New York" from December 1989 to the date he signed the application. This statement contradicts the applicant's statement on the current Form I-687 that he resided at [REDACTED] Street, New York, New York" from 1980 to 1989.

The record contains a photocopy of the applicant's passport issued in Dakar, Senegal, on September 12, 1987, with an expiration date of September 11, 1990. The applicant claims on the current Form I-687 that he was in Senegal for a family visit from May to June 1989. Since the applicant's passport was issued in Dakar, Senegal, on September 12, 1987, he was clearly in Senegal as of that date, even though he does not indicate on either the current Form I-687 or the 1990 Form I-687 that he was in Senegal in September of 1987.

The applicant's Senegal passport contains a United States non-immigrant F-1 student visa issued in Dakar, Senegal, on May 31, 1989, valid for one entry until August 30, 1989. There is a United States immigration stamp on the facing page indicating the applicant was admitted to the United States at New York, New York, on June 17, 1989, as nonimmigrant F-1 student and was authorized to remain in the United States for the duration of his studies.

In a separate proceeding the applicant filed a Form I-589, Request for Asylum in the United States, with the Service on February 6, 1992. At part #14 of the Form I-589, where applicants are instructed to list the names and locations of schools they have attended, the applicant indicated that he attended the University of Dakar in Dakar, Senegal, from January 1985 to June 1989, and graduated from that institution with a degree in science. He further indicated that he attended "College Saldia" in Senegal from January 1982 to June 1984 and attained a diploma in science. These statements contradict the applicant's current claim that he has resided in the United States since 1980.

The applicant attached an affidavit to the Form I-589 in which he stated:

I am the leader of an organization called P.A.I. which has to do with fighting for young men's rights, and very often workers rights to get better working conditions and basic human rights in SENEGAL. . . .

On the 14th day of June 1989, I came to the U.S.A. to visit friends, and two months later, I received a note from [my] brother and the secretary of my organization told me [sic] to stay in the U.S. as long as possible because of a present strike which has been activated by my organizations [sic]. . . .

The record contains a Form G-325A Biographic Information form dated January 8, 1992. The applicant indicated on this form that he resided at "[redacted] Dakar, Senegal" from June 1968 to September 1988. This statement contradicts his claim on the Form I-687 that he has resided continuously in the United States since 1980.

The record also contains a photocopy of the applicant's Social Security statement dated October 19, 2000. This statement does not reflect any taxed social security earnings in the United States prior to 1991.

On March 15, 2001, the applicant filed a Form I-485, Application for Adjustment of Status, based on eligibility as a DV-2001 Lottery Winner. The applicant stated on the 2001 Diversity Lottery, submitted to the Service on October 6, 2000, that he was married to [redacted] in Thies, Senegal, on September 9, 1970. However, the applicant indicated on the Form I-485 and the accompanying G-325A dated February 14, 2001, that he was "not married."

Department of State (DOS) regulations for the DV-01 program state that the eligibility requirements for this program include the following:

A DV petition shall consist of . . . name(s) and date(s), place(s) of birth of spouse and child(ren). . . 9 FAM § 42.33(B).

The district director noted that the applicant did not submit any evidence to corroborate his statement that he was married to [redacted] as stated on his DV-01 lottery entry form. The district director further noted that the applicant stated during his I-485 interview and on other applications in the record of proceedings that he was single. The district director determined that the applicant's DV—01 application was fraudulent, rendering the applicant inadmissible to the United States under section 212(a)(C)(6)(i) of the Act, and denied the I-485 application for this reason.

The applicant previously indicated on his 1990 Form I-687, his asylum application, and his Form I-485 and supporting Form G-325A that he was single. He indicated on the DV-01 application that he had been married since 1970. He indicated on the current Form I-687 that he is "now married." The applicant has not provided any explanation for these discrepancies.

On appeal, the applicant states that he was only 14 years old when he first came to the United States in 1980 and most of his witnesses are individuals who were acquainted with his father, who was traveling in the United States on business. He explains that he was unable to rent an apartment in his own name as he was underage, so he "lived in different locations from time to time." The applicant further states, "I wrote to the INS to cancel my asylum application which

was filed by a third party after I became aware of some mistakes.” He does not, however, submit any independent evidence to corroborate his claims.

The applicant signed the asylum application certifying under penalty of perjury that all information provided on the application was true and correct. Therefore, he is responsible for all information provided on the asylum application, on his accompanying affidavit, and on the Form G-325A. Furthermore, even if the information provided by the applicant on his asylum application is not considered in the current Form I-687 application, there are still numerous contradictions and discrepancies in the applicant’s statements on the Form I-687 and during the legalization interview and the documents he provided to corroborate his claim of continuous residence in the United States during the requisite period. The applicant has not provided a satisfactory explanation for any of these contradictions and discrepancies.

Doubt cast on any aspect of the applicant’s proof 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, and 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).

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 only four people concerning that period, all of which lack sufficient verifiable information to corroborate the applicant’s claim. Additionally, as previously stated, there are contradictions and discrepancies between the statements by the affiants and the applicant’s statements on the Form I-687 and during his legalization interview. Furthermore, it has been determined that the applicant is inadmissible to the United States under section 212(a)(6)(c)(i) of the Act as an alien who attempted to obtain an immigration benefit through fraud and the willful misrepresentation of material facts.

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 credibly 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*. In fact, the evidence of record, considered in its totality, strongly suggests that the applicant first entered the United States on June 17, 1989, when he was admitted to the United States as a nonimmigrant F-1 student, not in 1980 as he claimed on the Form I-687. 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.