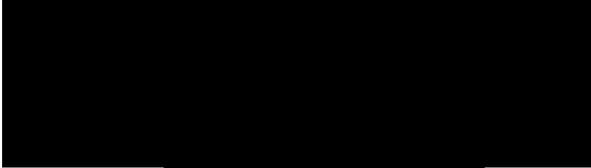




U.S. Citizenship
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LI

FILE: [REDACTED]
MSC-04-293-10637

Office: NEW YORK

Date: AUG 15 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 N. 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to establish 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 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 asserts that he has lived in the United States since prior to January 1, 1982. He states that he is appealing because his decision letter informed him that he had the right to do so. The applicant also submits additional documentation in support of his 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 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) and 8 C.F.R. § 245a.2(b)(1).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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)(1).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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. 8 C.F.R. § 245a.2(d)(5).

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.

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 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 July 19, 2004. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, he showed his first address in the United States to be [redacted] New York, NY from 1981 to 1984. He showed his second address as [redacted] Bronx, NY from 1984 to 1995. He showed his third and final address listed as [redacted] Bronx, NY from 1995 until the date he signed his Form I-687. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since their first entry, the applicant showed five absences since his entry in 1981 as follows:

- Family visit to The Gambia December 8, 1987 to January 7, 1987 [sic]
- Family visit to The Gambia October 1, 1991 to November 4, 1992
- Family visit to The Gambia June 2, 1995 to July 19, 1995

- Family visit to The Gambia January 3, 1999 to February 14, 1999
- Family visit to The Gambia August 16, 2002 to September 24, 2002

There is only one visit listed on the applicant's Form I-687 that occurred during the statutory period. This visit is listed as having occurred from December 8, 1987 to January 7, 1987 [sic]. If the applicant's intent was to have listed this visit as either having begun in 1986 or ended in 1998, this visit lasted for less than 30 days.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided continuously in the United States since January or February of 1981 and worked in the United States since 1981 and that he did not have any absences from the United States that lasted for more than 30 days before May 4, 1998.

At part #33, the applicant showed his employment in the United States to that of a self-employed vendor from 1982 to 2004. The applicant does not list an address or city in which he was employed.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two affidavits, one letter and copies of four passports issued to him in support of his claim of residence in the United States during the requisite period.

The first affidavit submitted by the applicant was notarized on December 9, 2005. This unsigned affidavit is from [REDACTED] and listed the applicant's residences as:

- [REDACTED] from 1981-1984
- [REDACTED] from 1984-1995
- [REDACTED] from 1995 to present

There is no contact information for [REDACTED] on this affidavit and the applicant indicated during his interview that [REDACTED] had passed away before the date of his interview which took place March 20, 2006.

The second affidavit submitted by the applicant was notarized on December 9, 2005. This unsigned affidavit is from [REDACTED] and stated that the applicant lived with [REDACTED] at [REDACTED] in New York from 1981 to 1984. There is no contact information listed on this affidavit for [REDACTED]

Contrary to the contents of this second affidavit, during the applicant's interview he indicated that, rather than living with [REDACTED] he lived with [REDACTED] when he resided at [REDACTED] in New York from 1981 to 1984. However, the interview notes do not indicate that the applicant only had one roommate at the time.

The third document submitted by the applicant is a letter dated April 4, 2006. This letter was submitted after the applicant received the director's Notice of Intent to Deny on March 31, 2006. This letter is signed by [REDACTED] and it is notarized. The letter stated [REDACTED] had known the

applicant since 1981 and that she had a relationship with him. [REDACTED] did not provide the dates that she and the applicant had a relationship, but she did state that at that time of her relationship with the applicant, he lived at [REDACTED] Bronx, New York. The letter provides a phone number for [REDACTED]

The applicant submitted photocopies of four passports, the oldest of which relates to the requisite period. Following are details of the contents of each passport submitted, from oldest in time to his present passport.

Cancelled Passport # [REDACTED]

This first passport was issued by The Gambia on July 9, 1985 and expired on July 8, 1990. This passport bears the following visas and entry and exit stamps:

- 1986 September 14 – Visitor's Pass to Nigeria, indicates entry
- 1986 September 14 – Departure stamp from The Gambia
- 1986 September 20 – Stamp [illegible]
- 1986 September [illegible] – Arrival stamp to The Gambia
- 1986 October 14 – Stamp from the United States Embassy in The Gambia. This stamp states that his application for a visa to the United States was received on October 14, 1986 and issued on December 19, 1986
- 1986 December 19 – B-1 United States Visa Issued to the Applicant by the United States Embassy in The Gambia
- 1987 January 7 – Departure stamp (illegible)
- 1987 January 7 – Arrival stamp to the USA in New York
- 1987 January 22 – Arrival stamp to The Gambia

Cancelled Passport # [REDACTED]

This second passport was issued by The Gambia on August 13, 1992 and expired on August 12, 1997. This passport bears the following visas and entry and exit stamps:

- 1992 September 28 – B-1 Multiple Entry United States Visa issued to the applicant
- 1992 October 28 – Departure stamp from The Gambia
- 1992 November 4 – Arrival stamp to the United States
- 1992 October 2 – Illegible stamp
- 1992 November 24 – Arrival stamp to The Gambia
- 1995 May 31 – B1/B2 Multiple Entry United States Visa issued to the applicant
- 1995 July 13 – Arrival stamp to the United States
- 1995 July 19 – Departure stamp from Senegal
- 1995 August 10 – Arrival stamp to The Gambia
- 1998 May 11 – Arrival stamp to Senegal
- 1998 May 11 – Departure stamp from Senegal
- 1998 May 11 – Arrival stamp to The Gambia
- 1998 May 11 – Departure stamp from The Gambia

Cancelled Passport # [REDACTED]

This third passport was issued by The Gambia on July 23, 1998. It was then renewed with an expiration date of August 2, 2005. This passport was issued as a replacement for passport # [REDACTED]. This passport bears the following visas and entry and exit stamps:

- 1998 December 17 – B1/B2 United States Visa issued; Cancelled without prejudice
- 1998 December 21 – B1/B2 United States Visa issued
- 1999 February 14 – Departure stamp from The Gambia
- 1999 February 14 – Arrival stamp to the United States
- 1999 March 15 – Arrival stamp to The Gambia
- 2002 May 29 – B1/B2 United States Visa issued
- 2002 September 24 – Departure stamp from Senegal
- 2002 September 24 – Arrival stamp to the United States
- 2005 May 20 – Visa for entry to Belgium issued from the consulate of Belgium in New York
- 2005 June 5 – Arrival stamp to The Gambia

Passport # [REDACTED]

This passport was issued by The Gambia on August 5, 2005 and expires August 5, 2010. This passport bears the following visas and entry and exit stamps:

- 2005 September 22 – Visa issued to enter Belgium
- 2005 September 25 – Departure stamp from The Gambia
- 2005 September 26 – Humanitarian Parole given to the applicant at the time of entry into the USA to resume his application for Adjustment of Status

Though he submitted these documents to establish that he had maintained continuous residence in the United States during the statutory period, the applicant's testimony during his interview, supporting documents submitted by the applicant and the applicant's Form I-687 are not consistent regarding when he lived at each residence and with whom he resided at these residences.

During his interview with the CIS officer, on March 27, 2006, the applicant stated that he came to the United States in either January or February of 1981. He told the officer that from the time of his arrival until 1981, the applicant lived on [REDACTED] with [REDACTED]. He informed the officer that his second address in the United States, at which he lived from 1987 to 1995, was on [REDACTED] with a friend named "[REDACTED]". The applicant then indicated that from 1995 until the date of his interview, March 20, 2006, he lived on [REDACTED] with his brother and a friend named [REDACTED]. He did not provide an address at which he continuously resided in the United States at any point in time during 1985 and 1986. This testimony is not consistent with information the applicant provided on his Form I-687 nor is it consistent with the information contained in the two affidavits submitted by the applicant.

Though the applicant's Form I-687 indicates one absence that occurred during the requisite period, in his interview with the CIS officer on March 20, 2006, the applicant indicated that he had not been absent from the United States at any time during that period. Further, though both the applicant's Form I-687 and his oral testimony during his interview with the CIS officer indicated that no absences during the requisite period lasted for more than 45 days, a stamp from the United States Embassy in Banjul, The Gambia in passport [REDACTED] indicates that the applicant was in The Gambia waiting for a Visa to enter the United States from October 14, 1986 until December 19, 1986 and then did not re-enter the United States until January 7, 1987. This indicates that during this single absence, the applicant was outside of the United States for at least 85 days. Further, arrival and departure stamps in this same passport indicate that the applicant was in both Nigeria and The Gambia in September of 1986 and that after entering the United States on January 7, 1987, he then re-entered The Gambia on January 22, 1987. Neither of these absences from the United States is reflected either in the applicant's Form I-687 or in the information he provided to the CIS officer during his interview. Though dates of his absences and length of time spent outside of the United States during his absences after May 4, 1988 fall outside of the period for which the applicant is statutorily required to establish that he maintained continuous residence in the United States, they are also not consistent with information provided by the applicant either in his testimony to his interviewing CIS officer or in his Form I-687.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In this case, the director did not find the evidence submitted by the evidence submitted by the applicant credible as it was not consistent. When the applicant submitted additional evidence to reconcile these discrepancies, the director did not find that he had established by a preponderance of the evidence that he had resided continuously in the United States. Therefore, in denying the application the director noted that the applicant had not met his burden of establishing by a preponderance of the evidence that he had continuously resided in the United States during the statutory period.

Though the director did not note this in her decision, evidence in the record also indicates that the applicant was absent from the United States for a period of time between January 1, 1982 and May 4, 1988, for more than 45 days. The applicant did not submit evidence to establish that this absence occurred for an emergent reason. Rather, the applicant maintained that he had not been absent for more than 45 days at any time during that period both in his Form I-687 and in his oral testimony.

On appeal the applicant the applicant submits two additional pieces of evidence in an attempt to explain these contradictions. He furnishes a new letter from [REDACTED] stating that she was in a relationship with him in 1981 and that he lived at [REDACTED] in Bronx, New York at the time of their relationship. The applicant also submits his 2005 tax return that establishes that the applicant was working in the United States in 2005.

The document from [REDACTED] is a letter rather than an affidavit. It is not signed or notarized. It does not state when [REDACTED]'s relationship with the applicant began or ended. The letter does not provide an address at which [REDACTED] states that the applicant resided continuously during the requisite period. It does not establish that [REDACTED] resided continuously in the United States during the requisite period. For these reasons, the letter is of minimal probative value and is given minimal weight. Therefore, it does not overcome the director's assertion that the applicant has not established, by a preponderance of the evidence, he resided continuously in the United States from before January 1, 1982 until he attempted to file his Form I-687 during the original filing date.

Because the tax return submitted with the applicant's appeal is not from a date that corresponds with the statutory period, this new evidence also does not overcome the inconsistencies within the record nor does it establish by a preponderance of the evidence that the applicant maintained a continuous residence in the United States during the requisite period.

The absence of sufficiently detailed 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 between what he indicated on his Form I-687 and his submitted evidence, most notably the stamps on his passport as well as contradictions between the applicant's Form I-687 and his oral testimony 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.