

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

41



FILE: [Redacted]  
MSC-05-159-10821

Office: NEW YORK Date: DEC 06 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, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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. Specifically, the director stated in her Notice of Intent to Deny (NOID) that the applicant furnished no evidence in support of his claim of having entered the United States before January 1, 1982. The director went on to say that she found the affidavits he submitted lacked credibility. The director further found that the applicant's seven (7) convictions for misdemeanors caused him to be inadmissible. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. In her notice of decision, the director stated that the applicant did not submit additional evidence in support of his application other than a personal statement. 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 the director was unreasonable to request the applicant to submit evidence that he entered before January 1, 1982. He states that he is submitting a letter from [REDACTED] in support of his application. He goes on to say that the director stated in error that she did not receive the applicant's evidence in response to her NOID until March 8, 2006. The applicant goes on to assert that the director erred in her citation of the date of the CSS/Newman Settlement Agreements.

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 be 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

Applicants are not eligible to adjust to temporary status if they have been convicted of a felony or three or more misdemeanors. 8 C.F.R. § 245a.2(c)(1) and 8 C.F.R. § 245a.18.

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.

There are two issues in this proceeding. The first issue 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. The second issue is whether the applicant is ineligible for adjustment to Temporary Resident Status pursuant to 8 C.F.R. § 245a.2(c)(1). Here, the submitted evidence submitted pursuant to the applicant's claim of having resided continuously in the United States for the duration of the requisite period is not relevant, probative, and credible. Further, evidence in the record indicates that the applicant has been convicted of seven (7) misdemeanors. Therefore, he is ineligible to adjust to Temporary Resident Status under 8 C.F.R. § 245a.2(c)(1).

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 8, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his address in the United States during the requisite period to be [REDACTED] New York from December of 1981 until November of 1994.

At part #33, he showed his first employment in the United States to be as a peddler in Bronx, New York from February of 1983 until he signed his Form I-687 in 2005.

Also in the record is the applicant's criminal history. All arrest entries mentioned below are based on fingerprint comparisons and pertain to the same individual. It is noted that this applicant's fingerprints are associated with the name [REDACTED] who is from Senegal with a date of birth of March 21, 1968. This history indicates that the applicant, at times using the name he has provided with this application, and at other times using other names, was arrested and then convicted seven (7) times on misdemeanor charges as follows:

1. On January 2, 1994 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge bears and Agency Case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was Adama Fall.
2. On May 15, 1994 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge and bears New York Police Department case number case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was [REDACTED].
3. On August 10, 1996 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. The name the applicant provided as his own at the time of this arrest was [REDACTED].
4. On June 28, 1997 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge and bears case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was [REDACTED].
5. On October 4, 1997 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge and bears case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was [REDACTED].
6. On March 31, 2001 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge and bears case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was [REDACTED].
7. On March 23, 2002 the applicant was arrested and subsequently charged with trademark counterfeiting in the third degree. This was a misdemeanor charge and bears case number [REDACTED]. The name the applicant provided as his own at the time of this arrest was [REDACTED].

The record contains a letter from the applicant in the form of a motion to reinstate his case dated February 6, 2006. This letter states that the applicant did not submit court dispositions concerning his arrests because the person who interviewed him regarding his arrests had a child who was sick on the day he went back to pick his disposition up. The applicant states that because this individual was not at work that day he was prevented from retrieving the

disposition. The applicant does not provide an explanation as to why he was unable to go back to obtain these dispositions on a subsequent day.

It is noted that the record indicates that the applicant has been convicted of seven (7) misdemeanor charges and therefore is ineligible to adjust to Temporary Resident Status pursuant to 8 C.F.R. § 245a.2(c)(1).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following affidavits:

- An affidavit from [REDACTED] and notarized on February 25, 2005 that states that the affiant knows that the applicant left the United States temporarily on November 6, 1986. Here, the affiant does not state when the applicant entered the United States or indicate whether the applicant continuously resided in the United States during the requisite period. Although not required to do so, the affiant failed to provide proof of his identity or his residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to confirm that the applicant continuously resided in the United States during the requisite period.
- A second affidavit from [REDACTED] and notarized on February 25, 2005 that states that the affiant knew the applicant before December 31, 1981 in New York. Here, the affiant fails to indicate how, where or when he met the applicant. Further, he does not state when the applicant entered the United States or indicate whether the applicant continuously resided in the United States during the requisite period. Although not required to do so, the affiant failed to provide proof of his identity or his residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to confirm that the applicant continuously resided in the United States during the requisite period.

In denying the application the director noted the above, and stated that she found that the applicant did not meet his burden of establishing by a preponderance of the evidence that he was eligible to adjust to Temporary Resident Status.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

On appeal, the applicant asserts that the director was unreasonable to request him to submit evidence that he entered the United States before January 1, 1982. He goes on to say that he is submitting a letter from Adama Mbaye in support of his application. Though the applicant asserts that the director stated in error that she did not receive the applicant's evidence in response to her NOID until March 8, 2006, the record shows that the director received this evidence, a statement from the applicant, timely and that she considered it when she made her decision.

Details of the evidence submitted with the applicant's appeal are as follows:

- A statement from [REDACTED] that was notarized on August 23, 2006. In this statement, Mr. [REDACTED] states that he met the applicant in or around December of 1981 in New York and that she [sic] has resided in the United States through May of 1988. Here, the affiant fails to indicate how, where or when he met the applicant. Further, he does not state when the applicant entered the United States or indicate whether the applicant continuously resided in the United States during the requisite period. Although not required to do so, the affiant failed to provide proof of his identity or his residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to establish by a preponderance of the evidence that the applicant continuously resided in the United States for the duration of the requisite period.

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 two (2) people concerning that period. Further, the record contains information that indicates that the applicant is ineligible to adjust to Temporary Resident Status because he has been convicted of seven (7) misdemeanor charges.

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. Further, the applicant appears to be ineligible to adjust to Temporary Resident Status, as the criminal record associated with the applicant indicates that he has been convicted

of seven (7) misdemeanor charges. Pursuant to 8 C.F.R. § 245a.2 he is not eligible for this benefit. Given the applicant's reliance upon documents with minimal probative value, and because evidence in the record indicates the applicant is ineligible for the benefit he has applied for, the applicant is found ineligible for Temporary Resident Status under section 245A of the Act.

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