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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 185-12265

Office: NEW YORK

Date: DEC 20 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 April 4, 2005. The director determined 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. The director found that the information contained in the affidavits submitted by the applicant was neither credible nor relevant for the purposes of establishing the applicant's continuous residence in the United States from prior to January 1, 1982 until the date on which he allegedly attempted to file a legalization application. The director further observed that the applicant's administrative file includes a Form G-325A, Biographic Information, in which the applicant attested under penalty of perjury that he resided in Senegal until 1994. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant contends that he never stated that he lived in Senegal until 1994. He asserts that he traveled to Senegal in 1994 in order to re-enter the United States properly, and states that he returned to the United States with a visa and a Senegalese passport. The applicant submits a brief statement, copies of previously submitted affidavits, and new evidence in support of the 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 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)(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).

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 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 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 Citizenship and Immigration Services (CIS) on April 4, 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 that he continuously resided in New York, New York during the requisite period at the following addresses: [REDACTED], from December 1981 until July 1987; and [REDACTED], from August 1987 until May 1997. At part #33 of the applicant's Form I-687, where he was asked to list all of his employment in the United States since he first entered, he indicated that that he was self-employed as a vendor at [REDACTED] and [REDACTED] in New York City from October 1983 until September 1997. He indicated that he has been with his current employer, Street Wise Messenger, since October 1997. At part #32, where he was asked to list all absences from the United States from January 1, 1982 to the present, the applicant stated that he visited Canada from June 1987 to July 1987, and from February 1994 until March 1994. The applicant indicated that he last entered the United States on a visitor visa on March 6, 1994.

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).

The applicant did not submit documentary evidence in support of his claim of continuous residence in the United States in an unlawful status during the requisite period. Accordingly, on November 15, 2005, the director, National Benefits Center, issued a notice of intent to deny the application, giving the applicant 30 days in which to submit additional evidence.

In response to the notice of intent to deny, the applicant submitted the following documents:

- A photocopy of a notarized declaration, dated May 6, 2004, written on the letterhead of [REDACTED] located at [REDACTED] New Rochelle, New York. The name of the person who signed the declaration is illegible. The declarant certifies that the applicant "has been residing in my building since November 1981 to the present." Because the name of the declarant is illegible and no contact telephone number has been provided, the information provided is not amenable to verification. The declarant does not indicate in which building the applicant resided for the claimed twenty-three year period between 1981 and 2004 or offer any corroborating evidence, such as receipts for rent payments, lease agreements, etc., in support of his statement. Further, the information contained in the declaration is inconsistent with information provided by the applicant on his Form I-687, where he indicated that he resided at three different addresses between 1981 and 2004. Given this inconsistency and the lack of significant detail provided by the unknown declarant, this evidence has minimal probative value.
- A photocopy of a notarized declaration from [REDACTED], dated August 14, 2002. The letter is printed on the letterhead of Street Wise, which the applicant states is his current employer. Mr. [REDACTED] stated that he has known the applicant since September 1981, and that he first met the applicant "on the street of Manhattan." He states that he has the same birthday as the applicant, and they became friends. It is noted that Mr. [REDACTED] testimony is inconsistent with the applicant's statement during an interview with a CIS officer that he first entered the United States in November 1981. Mr. [REDACTED] does not indicate that he has personal knowledge of the applicant's address of residence during the requisite period, nor does he indicate the frequency or circumstances under which he saw the applicant between 1981 and 1988. He does not indicate whether there were periods of time in which he did not see the applicant. Because this declaration is inconsistent with the applicant's own testimony and lacks significant detail, it can be given minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period. Further, because it contains information which is not consistent with the information contained on the

applicant's Form I-687 and in the applicant's own sworn testimony, doubt is cast on the testimony contained in it.

- A photocopy of a notarized declaration from an unknown individual, dated July 23, 2002. The declarant, whose name is illegible, states that the applicant has been living in the United States since July 1981. Because the individual's name is illegible and no contact telephone number was provided, the information contained in the declaration is not amenable to verification. The declarant does not indicate how he or she met the applicant, what his or her relationship is with the applicant, or how frequently he or she saw the applicant during the requisite period. The declarant does not indicate that he or she has personal knowledge of an address at which the applicant resided between 1981 and 1988. Further, the declarant's statement that he or she met the applicant in July 1981 is inconsistent with the applicant's statements that he first entered the United States in November 1981. Because of this inconsistency, the lack of any detail regarding the declarant's relationship with the applicant, and the lack of information that would allow CIS to verify the declarant's statements, this evidence can not be given any weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

The applicant also submitted copies of birth certificates for his three children, who were born in New York in 2001, 2003 and 2005, as well as evidence that he and his spouse filed federal income tax returns with the Internal Revenue Service for the 2002, 2003 and 2004 tax years. However, this evidence does not support the applicant's claim of continuous unlawful residence in the United States during the requisite period from prior to January 1, 1982 until the date on which he attempted to file a legalization application between May 5, 1987 and May 4, 1988.

The applicant was interviewed under oath by a CIS officer on March 20, 2006. The applicant stated that he entered the United States without inspection through Canada. He provided an employment history that was different from what he had indicated on his Form I-687. Specifically, he testified that he was self-employed as a street vendor from 1981 until 1986, and then employed as a locksmith from 1986 until 1990. In addition, whereas the applicant previously stated under penalty of perjury on his Form I-687 that he traveled to Canada from February 1994 until March 1994, he stated during his interview that he traveled to Senegal from January 1994 until February 1994 to visit family and came back with a visa through Canada.

On March 23, 2006, the district director, New York issued a notice of intent to deny the application. The director noted that the affidavits submitted were neither credible nor amenable to verification, and advised that credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, some proof that there was a relationship between the applicant and the affiant, and a current phone number at which the affiant can be contacted for verification. The director also observed the statements made in the affidavits were not corroborated by any additional documentation.

Finally, the director observed that the applicant's administrative file includes a Form G-325A, Biographic Information, in which the applicant stated under penalty of perjury that he lived in Dakar, Senegal until the year 1994. The director therefore determined that the applicant had failed to demonstrate that he had entered the United States prior to January 1, 1982, and is also incapable of meeting either the necessary residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act. The director granted the applicant thirty (30) days in which to submit additional evidence in response to the director's determination.

In response, the applicant submitted an undated, un-notarized letter from [REDACTED] who states that he has known the applicant since 1994, and first met him when they were both employed by Right Way Couriers. The applicant also re-submitted a copy of the declaration of [REDACTED] along with a copy of Mr. [REDACTED] New York State identity card. Finally, the applicant submitted an envelope addressed to him at [REDACTED] in Staten Island, New York, which bears a postmark date of December 23, 1994.

The director denied the application on June 23, 2006. The director acknowledged the evidence provided in response to the notice of intent to deny. The director found that the statement from Mr. [REDACTED] was irrelevant as he stated that he first met the applicant in 1994, well outside the relevant statutory period. The director stated that Mr. [REDACTED] was contacted and interviewed by telephone. The director stated that while Mr. [REDACTED] provided credible information confirming that he does in fact know the applicant, he stated during the interview that he has known the applicant for only approximately 10 years, not since 1981 as claimed in his affidavit. The director determined that the affidavit from Mr. [REDACTED] must also be considered irrelevant, as it had not been established that he knew the applicant between 1981 and 1988.

The director further observed that the applicant had failed to provide any tangible evidence or credible documentation to establish his claimed presence in the United States during the statutory time frame. Finally, the director noted that the applicant had failed to address his earlier statement on a previously-submitted Form G-325A that he resided in Senegal until 1994. The director therefore determined that the applicant had failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residency in the United States from before January 1, 1982 until the date on which he attempted to file a completed legalization application between May 5, 1987 and May 4, 1988.

On appeal, the applicant states that during his interview, "the officer did insist on the fact I lived in Senegal until 1994." The applicant states that during his stay in the United States he was working at a store called [REDACTED] where he was underpaid due to his lack of documentation. He states that for this reason, he went to Senegal in 1994 "in order to re-enter the U.S. properly and at the same time getting social security, I came back with a visa and a Senegalese passport." He asserts that he never stated that he lived in Senegal until 1994.

In support of the appeal, the applicant resubmits all copies of all affidavits and declarations discussed above. He also submits photocopies of envelopes bearing Senegalese postage stamps and postmarks. One envelope is addressed to the applicant at his current address in New York, where he claims to have resided since June 1997. However, the letter was allegedly date stamped on February 18, 1987, more than

ten years earlier. The other envelope is addressed to the applicant at his initial claimed address in the United States. However, the envelope was ostensibly date stamped on July 22, 1981, while the applicant states that he first entered the United States in November 1981. Because of these inconsistencies, this evidence has little probative value.

With respect to the applicant's statement on appeal, the AAO notes that the record does in fact include a Form G-325A completed by the applicant in 2002 on which he stated that he resided at [REDACTED] in Dakar, Senegal until March 1994. The applicant did not indicate on Form G-325A on what date he first resided at this address. However, the applicant's assertions on appeal that he "never stated" that he resided in Senegal until 1994 are clearly not supported by the record. It is further noted that on his Form I-687, the applicant did not state that he traveled to Senegal in 1994, although he was asked to list all absences from the United States since his initial entry. He stated on his Form I-687 that he traveled to Canada from February to March 1994, and he does in fact have in his passport a B-2 visa issued on March 4, 1994 by the U.S. Consulate in Quebec.

The applicant indicates that he returned to Senegal in 1994 to obtain a U.S. visa and a Senegalese passport. It is noted that his passport was actually issued in Dakar, Senegal on November 19, 1993, and, as noted above, the evidence shows that the applicant traveled to Canada to obtain a U.S. visa. The applicant does not claim to have traveled to Senegal in 1993 although he was clearly in Senegal at that time. Therefore, the evidence does not support the applicant's statements that he traveled to Senegal in 1994 in order to obtain a Senegalese passport and a U.S. visa. The record only contains a partial copy of the applicant's passport, but it is noted that there are no arrival or departure stamps indicating that the applicant traveled to Senegal in 1994. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Overall, the applicant has not submitted evidence to overcome his previous statement that he resided in Senegal until 1994.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this 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) affiants concerning that period, neither of which is credible, probative nor amenable to verification. As noted by the director, the remaining two affidavits, while somewhat more credible, are irrelevant because it has not been established that the affiants knew the applicant prior to 1994. Finally, the applicant has not provided sufficient evidence to explain or overcome his previous statement that he resided in Senegal until 1994, which makes him ineligible for the benefit sought. As such, he cannot meet either the necessary continuous residency or continuous physical presence requirements for

legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent 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 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.