

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

4

FILE: [REDACTED]  
MSC-05-285-10772

Office: NEW YORK

Date: DEC 21 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

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 denied the application, finding that 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 asserts his claim of eligibility to adjust to temporary resident status.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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. See CSS Settlement Agreement, paragraph 11 at page 6 and 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 period, 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).

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.

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on July 12, 2005. At part #16 of the I-687 application where the applicant was asked to indicate when he last came to the United States, he indicated his last entry into the country to have been on April 23, 1992. 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, the

applicant listed [REDACTED] as his address from 1981 to 1986; [REDACTED] Queens, New York, as his address from 1986 to 1993; and [REDACTED], New York, New York, as his address from 1993 to the present. Similarly, at part #33, the applicant indicated that he was self-employed as a vendor from 1993 to the present.

In response to the director's request for evidence, and in an effort to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following affidavit:

- An affidavit from [REDACTED] in which he stated that the applicant is his cousin and that he has been acquainted with the applicant in the United States since 1981. The affiant lists the applicant's addresses as: [REDACTED] New York from October of 1981 to June of 1986; [REDACTED], New York, New York, from June of 1986 to March of 1993; and [REDACTED] New York from March of 1993 to the present. Here the affiant has failed to specify the circumstance under which he met the applicant and the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this affidavit. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted a copy of his earnings statement from the Social Security Administration that listed his years of employment in the United States to be 1993 through 2004. The applicant also submitted a structural fire report from the New York fire department, which showed that the New York fire department responded to a report of a fire at [REDACTED] New York, on April 7, 1995, at 3:54 am. The report also showed that a [REDACTED] was the named occupant of the apartment at that time. It is noted that the applicant has submitted other evidence including; an employment verification letter, a lease agreement, bank statements, and earning statements for years that are subsequent to the requisite period. However, the issue in this proceeding is whether the applicant has established his residence in the United States during the requisite period; and therefore, such evidence is non-evidentiary and will not be considered in determining the applicant's eligibility for the benefits sought.

In denying the application the director determined that the affidavit submitted was not credible, and that there was no proof in the record to show that the affiant had direct personal knowledge of events and circumstances of the applicant's residency. The director determined that the applicant had not met his burden of proof, in that he failed to provide tangible evidence or credible documentation to attest to his claimed residence and presence in the United States during the statutory period.

On appeal, the applicant requests that he be given an opportunity to have a second interview in relation to his I-687 application, and claims that he is eligible for the temporary residence status sought. The applicant submits a copy of the final rule pertaining to Legalization filings pursuant to Section 245A of

the Act. The applicant resubmitted a copy of the [REDACTED] affidavit. The applicant also submits copies of an envelope whose postmark is illegible, and he submits other documentation that is dated subsequent to the requisite period. The applicant submits a copy of an unidentified photograph. The applicant also submits the following affidavits:

- An affidavit from [REDACTED] in which she states that she is a friend of the applicant and that she has had an acquaintance with the applicant since 1981. The affiant lists the applicant's addresses as: [REDACTED], New York from October of 1981 to June of 1986; [REDACTED] Street, New York, New York, from June of 1986 to March of 1993; and [REDACTED] New York, New York, from March of 1993 to the present. This statement is inconsistent with the applicant's statement on Form I-687, at part #30 where the applicant listed his address to be [REDACTED], New York, from 1986 to 1993. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Here, the affiant has failed to specify the circumstances under which she met the applicant and the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of her identity with this affidavit. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit conflicts with other evidence in the record, and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he states that he is a friend of the applicant and that he has had an acquaintance with the applicant since 1981. The affiant lists the applicant's addresses as: 2 [REDACTED], New York from October of 1981 to June of 1986; [REDACTED] Street, New York, New York, from June of 1986 to March of 1993; and [REDACTED] New York, New York, from March of 1993 to the present. This statement is inconsistent with the applicant's statement on Form I-687, at part #30 where the applicant listed his address to be [REDACTED], New York, from 1986 to 1993. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. Here, the affiant has failed to specify the circumstances

under which he met the applicant and the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of his identity with this affidavit. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit conflicts with other evidence in the record, and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant has failed to submit sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods. The applicant claims on appeal to be eligible for the benefits sought in that he was present in the United States prior to January 1, 1982, and has resided in the country until the present date. However, the record of proceedings contains copies of the applicant's passport, B1/B2 visa, and Air Afrique airline ticket that demonstrate his travel and arrival in the United States in April/May of 1992. Further, the applicant submitted Form I-589, Request for Asylum in the United States, dated May 13, 1993, in which he indicated in part #12 that he arrived in the United State on April 25, 1992, via John F. Kennedy Airport. Likewise, in part #24 of the applicant's I-589 application, when asked to indicate whether he ever traveled to the United States before, he checked "no," and in part #26 of that same application the applicant indicated that he left [REDACTED], for the United States on April 25, 1992.

It is further noted that the record of proceedings contains the applicant's Form I-765, Application for Employment Authorization, dated May 13, 1993, in which he indicated in part #12 that he last entered the United States on April 25, 1992. Likewise, in part #4 of the I-589 application, the applicant indicated that his address prior to coming to the United States was [REDACTED], Bamako, Mali. In addition, the applicant stated in his I-687 application, part #16 that he last came to the United States on April 23, 1992, but at part #32 he indicated that his only absence from the United States was from 1986 to 1986 when he traveled to Mali for a "family visit." This information directly contradicts the applicant's claim of being present in the United States before January 1, 1982. It is noted that the applicant failed to present any credible evidence demonstrating his departure from the United States in 1986, and/or his return during that same year.

The director noted in the Notice of Intent to Deny dated March 10, 2006, that the applicant stated under oath during his interview with immigration officials on March 6, 2006, that he had lost all of his documentation in a fire at his address in Queens, New York. The applicant submitted a copy of a structural fire report from the New York fire department, which showed that the New York fire department responded to a report of a fire at [REDACTED], New York, on April 7, 1995, at 3:54 am. The report also showed that a [REDACTED] was the named occupant of the apartment at that time. In contrast, the applicant indicated on his I-687 application part #30 that he lived at [REDACTED] Street, Queens, New York, from 1986 to 1993, some two years before the fire that was reported on April 7, 1995.

The applicant has failed to submit any independent objective evidence to explain or justify the apparent 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. It is incumbent upon 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, supra.*

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. The numerous discrepancies found in the applicant's statements and in the record of proceedings also detract from the credibility of the applicant's 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 paucity of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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 ineligible for temporary resident status under section 245A of the Act on this basis. Therefore, the director's decision will be affirmed and the appeal will be dismissed.

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