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U.S. Citizenship  
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JUN 04 2007

[Redacted]

FILE: [Redacted]  
MSC 05 029 10209

Office: NEWARK

Date:

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. [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Newark, New Jersey, and 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 (the Service), now Citizenship and Immigration Services (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 reiterates his claim of eligibility for temporary resident status and asserts that he has submitted sufficient evidence to corroborate his claim.

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).

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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 October 29, 2004. 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 indicated that he resided at “██████████ New York, New York” from 1981 to 1985 and at “██████████, New York, New York” from 1985 to 1992.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided an affidavit from ██████████ stating that he met the applicant in 1981 when the applicant was selling tapes, watches and women’s accessories in front of Penn Station in Newark, New Jersey. Ms. ██████████ explained that he was curious about the applicant’s accent and engaged in a discussion with the applicant about his country of origin. Mr. ██████████ states that when he passed the applicant on his way to work, he usually stopped and discussed various topics with the applicant, especially Africa. Mr. ██████████ further stated that he visited the applicant at his house located at ██████████ and later at ██████████. Mr. ██████████ also states that the applicant explained to him how he entered the United States without inspection and indicates that he

was in regular contact with the applicant until he left the United States from 1981 to 1992. Mr. [REDACTED] testimony that the applicant entered the United States from Mexico without inspection in 1981 is based on second-hand information provided to him by the applicant and cannot be accepted.

The applicant also submitted an affidavit from [REDACTED] stating that she met the applicant in Senegal in 1980 when he was a friend of her former boyfriend, now her husband. She explains that the applicant traveled to the United States in 1981 with his uncle's help, but they kept in touch by phone and letters until the applicant left the United States in 1992. Finally, she states that she remembers that the applicant entered the United States without inspection from Mexico. Ms. [REDACTED] does not provide specific verifiable information such as the applicant's addresses in the United States during the requisite period. Furthermore, Ms. [REDACTED] statement regarding the applicant's manner of entry into the United States is based on second-hand information provided to her by the applicant.

The applicant included an affidavit dated August 15, 2005, from [REDACTED] explaining that he first met the applicant in Senegal in 1976 when they were both in junior high school. Mr. [REDACTED] states that the applicant left Senegal in 1981 to go to the United States where his uncle was living. Mr. [REDACTED] indicates that the applicant entered the United States from Mexico without inspection. Mr. [REDACTED] further states that he stayed in touch with the applicant through phone calls and letters until the applicant left the United States in 1992 to return to Senegal for family reasons. However, Mr. [REDACTED] did not provide any specific verifiable information such as the applicant's addresses in the United States during the requisite period. As with Mr. [REDACTED] and Ms. [REDACTED], Mr. [REDACTED] statement regarding the applicant's manner of entry into the United States derives from second-hand information provided to him by the applicant.

Finally, the applicant provided an affidavit dated August 13, 2005, from [REDACTED] stating that she met the applicant in about July 1981 when he was living with his uncle in the same building where she used to visit a friend, [REDACTED] Harlem, New York." Ms. [REDACTED] states that she and the applicant used to sit in front of the building playing cards or chess and discussing how the applicant had entered the United States from Mexico four months earlier. Ms. [REDACTED] explains that the applicant moved to [REDACTED] in 1985, but he still came to the building located at [REDACTED] to play cards and chess on a weekly basis. Ms. [REDACTED] states that during the period from 1981 to 1990, the applicant was self-employed as a street vendor selling "accessories." Ms. [REDACTED] testimony regarding the applicant's date and manner of entry into the United States are based on second-hand information provided to her by the applicant. Furthermore, Ms. [REDACTED] does not provide the applicant's inclusive dates of residence at [REDACTED] or the applicant's complete address and dates of residence at [REDACTED].

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. These affidavits lack sufficient detail or verifiable information to corroborate the applicant's claim of continuous residence in the United States during the period in question.

The absence of sufficiently detailed supporting documentation that provides testimony 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 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.