

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



W

MAY 08 2007

FILE: [REDACTED]
MSC 05 082 10868

Office: KANSAS CITY

Date:

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Kansas City, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from prior to 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 stated that he did not understand why his application was denied. He submits additional documents in support of his appeal.

An alien 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. See section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

The applicant indicated on the Form I-687 that he entered the United States in November 1981 and had resided continuously in the United States since that date. At block 16, where applicants are instructed to indicate their last date of entry into the United States, the applicant indicated that he last entered the United States on January 1, 1994, as a nonimmigrant B-2 visitor. At block 30, where applicants are instructed to list all residences in the United States, the applicant indicated that he lived at [REDACTED] from 1981 to 1994. At block 33, where applicants are instructed to list all employment in the United States since January 1, 1982, the

applicant indicated that he worked delivering groceries for [REDACTED] located at [REDACTED], New York, New York, from November 1981 to February 1984. The applicant did not list any employment in the United States between February 1984 and 1995, when he began working for [REDACTED] located at [REDACTED] White Plains, New York, doing "various work." The applicant did not submit any evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file his Form I-687.

It is noted that the applicant filed a Form I-589, Request for Asylum in the United States on October 14, 1994. The applicant indicated on his asylum application that he last left Senegal on January 14, 1994, and traveled on business to Paris, France for 10 days, to Wuppertal, Germany, for 2 days, and to Montreal, Canada, for one day. The applicant stated on his asylum application at block #18, where aliens are requested to list their reason for seeking asylum, that he was seeking "economical asylum" because he traveled to Germany in June 1993 and purchased "a lot of merchandise" for resale in Senegal. He further stated that when he returned to Senegal with the merchandise he had purchased in Germany in December 1993, he learned that the currency of Senegal had been devalued and he were not able to make any profit on the merchandise. On his Form G-325A, Biographic Information, the applicant stated that he had lived in Senegal "since birth" and did not list any residences in the United States.

The applicant indicated during his asylum interview on June 8, 1995, that he was a member of the "The Priest Movement", a group whose aim was to liberate Cassamance from Senegal, that the government of Senegal was fighting this group, and that all of his family members had been arrested and jailed. The applicant further stated that his textile business failed because of his group's fight with the government, and indicated that he had flee Senegal to avoid being arrested and jailed himself. This statement contradicts the applicant's statement under penalty of perjury on the asylum application that his business failed because the currency had been devalued and he was not able to make a profit on the merchandise he purchased in Germany.

Additionally, the applicant stated under penalty of perjury at block #16 of the asylum application, where applicant are instructed to list their spouse and all unmarried children under the age of 21, that he had a wife living in Senegal, but he did not list any children. During his asylum interview, however, the applicant told the interviewing officer that he had three children ages 3, 6, and 8, who were living with their mother in Mauritania. The applicant's statement during his asylum interview that he had three children living with their mother in Mauritania contradicts his statement on the asylum application that he had a wife living in Senegal, but no children.

The applicant claimed on the Form I-687 that he had lived in the United States since November 1981. At block #32, where applicants are instructed to list all absences outside the United States since entry, the applicant indicated that he was in Senegal for "a family visit and emergency" from November 1993 to January 1994. The applicant's claim on the Form I-687 that he had lived in the United States since November 1981 contradicts his previous statement on his asylum application that he had lived in the United States since January 27, 1994. This statement also contradicts the applicant's statement on the G-325A biographic information form that you had lived in Senegal "since birth."

The applicant indicated at block #31 of the Form I-687, where applicants are instructed all organizations or associations of which they have been a member since entry into the United States, that he was affiliated with Masjid ██████████ in New York, New York, from November 1981 to April 1999, but he submitted in support of his application a letter dated July 24, 2006, from ██████████, Pan African Islamic Society, New York, New York, stating that the applicant had attended services at his mosque since 1984. This letter contradicts the applicant's statement under penalty of perjury on the Form I-687 that he was affiliated with Masjid ██████████ from November 1981 to April 1999.

These contradictions raise questions regarding the credibility of the applicant's claim that he has resided continuously in the United States since 1981. 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. Further, it is incumbent on 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*, 19 I&N Dec. 582. (Comm. 1988).

On January 24, 2007, the district director issued a Notice of Intent to Deny the application. The district director noted that the applicant had not submitted sufficient evidence to establish entry in the United States prior to January 1, 1982, and continuous residence in this country from that date to the date he attempted to file his Form I-687. The district director afforded the applicant thirty (30) days to submit additional evidence to establish continuous residence in the United States from January 1, 1982 to May 4, 1988. The record does not contain a response from the applicant.

The district director denied the application on March 5, 2007, because the applicant failed to establish continuous residence in the United States during the requisite period.

On appeal, the applicant submits an affidavit dated April 23, 2007, from ██████████ who identifies himself as the applicant's cousin, stating that the applicant came to the United States in November 1981 at age 17. Ms. ██████████ further states that when she was growing up in Senegal, her mother used to tell her about her cousin ██████████ who had been living in America since 1981. Ms. ██████████ indicates that when she came to the United States herself in 1993, the applicant was living in this country and allowed her to stay in his apartment in Manhattan. Ms. ██████████ affidavit is not sufficient to establish the applicant's claim that he has resided in the United States since November 1981. Ms. ██████████ statement is not based on first-hand knowledge, but rather on information provided to her as a child by her mother in Senegal.

The applicant has not submitted sufficient credible evidence to establish his claim of continuous residence in the United States during the requisite period or to overcome the contradictions and discrepancies noted above. He has, therefore, failed to submit sufficient credible evidence to establish continuous residence in the United States during the requisite period.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section

245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

It is noted that the applicant's 2005 Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested in White Plains, New York under the name [REDACTED] on August 21, 1997, and charged with petit larceny. The fingerprint results report further indicates that the applicant was convicted of this charge upon a plea of guilty. On appeal, the applicant has provided a document from the Greenburgh Town Court, Greenburgh, New York, indicating that he was convicted of petit larceny in violation of petit larceny in violation of PL 155.25, a misdemeanor, and placed on conditional discharge. This one misdemeanor conviction does not render the applicant ineligible for temporary resident status based on his criminal record.

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