

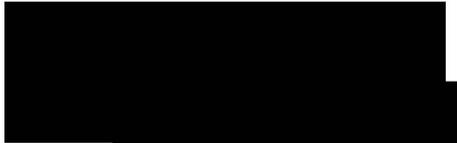
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 05 046 11081

Office: PHILADELPHIA

Date: **MAY 15 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. 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, Philadelphia, Pennsylvania, 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 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 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, applicant states that attorney Leslie A. Jennings, New York, New York, prepared his Form I-687, Application for Temporary Resident Status, for a fee of \$1,200.00, but Ms. Jennings didn't tell him to provide proof of his initial entry into this country in 1981 and his residence in the United States prior to January 1, 1982 to the filing date of the application and continuous physical presence in the United States from November 6, 1986 to the filing date of the application. The applicant states that he needs temporary resident status to help support his family and other relatives in his country, of origin, Niger. The applicant further states that he has been a trader "since my youngest age."

An applicant for temporary residence 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. *See* section 245(A)(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

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).

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

8 C.F.R. § 245a.2(d)(3)(V) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 the 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The applicant stated on the Form I-687 at block 16, where applicants are instructed to indicate their last date of entry into the United States, that he last entered the United States in December 1999 at New York, New York, as a nonimmigrant visitor. At block 30, where applicants are instructed to list all residences in the United States, the applicant indicated that he lived at "[redacted] New York, New York, from 1981 to 1985 and at [redacted], New York, New York" from 1985 to 1995. At block 33, where applicants are instructed to list all employment in the United States since January 1, 1982, the applicant indicated that he was self-employed as a vendor in New York, New York" from 1981 to 1994. In support of his application, the applicant submitted an affidavit dated December 27, 2005, from [redacted] a resident of Harrisburg, Pennsylvania,

stating that he had personal knowledge that the applicant had resided in Brooklyn, New York, from November 1984 to an unspecified date; a photocopy of a North Carolina Identification Card issued to the applicant's wife on August 12, 2003; a photocopy of a North Carolina Driver's License issued on August 12, 2003; and, a photocopy of a Pennsylvania Driver's License issued on August 24, 2005.

On April 28, 2006, the district director issued a Notice of Intent to Deny the application. The district director noted that the applicant claimed during his legalization interview on January 3, 2006, that he had traveled in a boat with his friend's father from Niger to Senegal and then to the United States at New York, New York. The district director stated that the applicant admitted that [REDACTED] a lawyer in New York, New York, completed the application on his behalf and that he paid \$1200.00 for her services. The district director informed the applicant that CIS computer records indicate that the applicant was admitted to the United States for the first time on December 9, 1999, at New York, New York. 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 June 2, 2006, because the applicant failed to establish continuous residence in the United States during the requisite period.

On appeal, the applicant repeats his statement that he paid attorney [REDACTED] \$1200.00 to prepare his application for him, but she failed to inform him that he needed to submit evidence to establish his claim that he has resided in the United States since 1981. He states that he needs to work in order to support his family in this country and to provide financial assistance to his relatives in Niger. He does not, however, submit any additional evidence to establish continuous residence in the United States from January 1, 1982 through May 4, 1988.

who indicated that he is a resident of Harrisburg, Pennsylvania, stated in his affidavit that he had personal knowledge that the applicant lived in Brooklyn, New York, from November 1984 to an unspecified date. Mr. [REDACTED] did not provide any information that would tend to corroborate the applicant's claim of continuous residence in this country during the period in question. Mr. [REDACTED] provided no information regarding the basis of his acquaintance with the applicant, the addresses where the applicant had resided during the period of his acquaintance, or the basis of his knowledge that the applicant had lived in Brooklyn from November 1984 to an unspecified date. The applicant has failed, both in response to the Notice of Intent to Deny and again on appeal, to submit any additional evidence to establish his claim of continuous residence in the United States during the requisite period. Furthermore, as stated by the district director, CIS computer records indicate that the applicant was admitted to the United States on December 9, 1999, at New York, New York, as a nonimmigrant visitor. The applicant has failed to submit sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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.

On appeal, the applicant asserts his attorney failed to tell him that he needed to provide evidence to establish his claim of continuous residence in the United States during the qualifying period. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit an affidavit in support of his claim, evidence confirming that counsel has been notified of the incompetency claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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