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**U.S. Citizenship
and Immigration
Services**

LA

[Redacted]

FILE: [Redacted]
MSC-05-292-12022

Office: NEW YORK

Date: SEP 07 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, and that decision 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 or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director found that during his April 7, 2006 interview with a CIS officer the applicant provided information regarding his absences from and residences in the United States that was not consistent with what he showed on his Form I-687. The director further noted that statements made by the applicant at the time of his interview and documents submitted by the applicant in support of his claim of having maintained continuous residence during the requisite period were not found credible. 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that he has continuously resided in the United States from December of 1981 until May 4, 1988. The applicant maintains that the evidence he previously submitted with his Form I-687 application was credible and establishes that he maintained continuous residence in the United States throughout the requisite period.

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 Immigration and Nationality Act (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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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, during the original legalization application period of May 5, 1987 to May 4, 1988, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant 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. 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 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 July 19, 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 his address in the United States during the requisite period to be [REDACTED] in Brooklyn, New York from December 1981 until November 1988. He then showed that he lived at another address in Brooklyn until January 2002 before moving to two separate residences in Columbus, Ohio and then moving back to his first residence at [REDACTED] in Brooklyn in January of 2005. At part #32 of his Form I-687, where the applicant was asked to list all absences from the United States

since January 1, 1982, he showed that he went to Canada for business purposes from April to May of 1987 and then he showed that he went to Senegal for a visit from February to April of 2002. At part #33, where the applicant was asked to list all of his places of employment since January 1, 1982 the record is incomplete. Pages six (6) and seven (7) of his application that may have indicated additional details regarding the applicant's employment in the United States if they were in the record are missing from the record. However, page five (5) of the applicant's Form I-687 has spaces for and also shows three places of employment, one of which is relevant to the requisite period. The employment shown that is relevant to the requisite period indicates the applicant was self-employed as a vendor on Canal Street in New York from November 1985 until February 2004.

The record also indicates that the applicant testified to the following to a CIS officer at the time of his interview on April 7, 2006:

- That he lost his passport. It is not clear from the record whether he indicated that he lost his current passport or if stated that he lost a previously issued passport.
- That he entered the United States in December of 1981. However, it is not clear from the record whether he stated that he did so after being inspected and admitted or if he entered without inspection.
- That he had resided continuously at one address, [REDACTED] New York and that he had never resided anywhere else. It is noted that this conflicts with what the applicant indicated on his Form I-687, where the applicant showed three additional addresses of residence.
- That he left only once between January 1, 1982 and May 4, 1988 and that this absence occurred in 2002 when he went to Senegal. It is noted that the response provided by the applicant does not correspond to the question asked. However, that the applicant did not indicate that he was absent from April to May of 1987 during his interview is not consistent with what he indicated on his Form I-687.
- That he worked during the requisite period selling African art with his uncle to African clients, which is why his English had not progressed further.
- That he was not ill at any time during the requisite period.
- That in 1989 he applied for legalization during the original application period but that he has no evidence of this. It is noted that 1989 is after the initial application period, as that period ended on May 4, 1988.

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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided one (1) affidavit, and photocopies of six (6) pages of one or more passports and one (1) medical letter.

Documents submitted in support of the applicant's claim that he maintained continuous residence in the United States are as follows:

One affidavit:

- This affidavit is from [REDACTED] and was notarized on December 1, 2005. The affiant states that she was born in New York and lives in New York. She further provides that she met the applicant in February of 1982 when she met him as she was going into a coffee shop for lunch. Though the affiant indicates that she met the applicant on the corner of [REDACTED], it is unclear where the applicant indicated he worked in 1982 on his Form I-687 because, as previously noted, the record is incomplete. However, the affiant did not establish her own address in the United States during the requisite period in this affidavit, nor did she establish that she resided continuously in the United States for the duration of that period. The affiant goes on to say that she saw the applicant everyday. However, in doing so she failed to provide dates through which she saw the applicant everyday. The affiant further failed to indicate an address at which it was personally known to her that the applicant resided during the requisite period. The affiant did not provide contact information, such as a telephone number at which the Service could contact her to verify information contained in this affidavit. Though not required to do so, the affiant has provided a copy of her driver's license as proof of her identity. Though the affiant provided information regarding when and where she met the applicant, she states that she did not meet him until February of 1982. It is therefore found that this affidavit is not sufficiently detailed to establish, by a preponderance of the evidence, that the applicant entered the United States before January 1, 1982 and then maintained continuous residence in the United States for the duration of the requisite period.

Photocopies of the following passport pages:

- Page 2 of a passport that appears to be numbered [REDACTED]. This passport page indicates this passport was issued to [REDACTED]. Though the photocopy of this page of the passport is not clearly legible, it appears that the residence shown is Bangui, DCA, which is the Capital of the Central African Republic.

- Page 3 is attached to page 2 of this passport and contains a photograph. However, this photocopy is of poor quality and therefore the photograph is not visible.
- Page 4 of the passport. This page indicates that the passport was issued on March 22, 1996 and expires on March 21, 2000.
- Page 5 the passport. This page indicates that the Embassy of Senegal has extended this passport until July 10, 2004.
- Two adjacent pages of a passport indicating that the passport is numbered what appears to be [REDACTED], contains thirty-two (32) pages and was issued by the Republic of Senegal.

It is noted that the photocopies of this passport indicate it was issued to the applicant in 1996. At the time it was issued, the applicant showed an address outside of the United States that appears to be in Bangui, Central African Republic. This is not consistent either with what he showed on his Form I-687 or with the testimony that he provided to the CIS officer during his interview on April 7, 2006 where he indicated that he was living in the United States at that time. The presence of this address in the applicant's passport casts doubt on the applicant's claim to have maintained continuous residence in the United States from December 1981 through 2006.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

One (1) medical letter:

- This letter is from [REDACTED] was stamped by [REDACTED] and is dated November 17, 2005. This letter is on letterhead from the Harlem Hospital Center in New York. This letter provides that the applicant has a mild, gross motor developmental delay. This letter goes on to say that the applicant requires occupational, feeding nutrition and speech/language therapy.

The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of "medical records showing treatment of hospitalization of the applicant." The regulation further provides that these records "must show the name of the medical facility or physician and the date(s) of the treatment." This letter fails to provide medical records showing what, if any, medical treatments the applicant received or list his date(s) of treatment. The letter also fails to indicate the source of information [REDACTED] referred to in making the determination that the applicant had this noted condition. It further fails to show the applicant's start date as his patient. Therefore, this letter does not establish that the applicant maintained continuous residence during the requisite period and is found to contain minimal details. However, though the director notes that the presence of this letter contradicts testimony provided by the applicant where he

indicated that he was not ill during the requisite period, it is noted that this letter indicates an ongoing condition rather than an illness. Further, it is not clear whether the applicant was diagnosed with this condition during the requisite period. Though this letter does not establish that the applicant maintained continuous residence in the United States during the requisite period, it is also not found to conclusively contradict testimony given by the applicant during his interview regarding illnesses and medical treatment during the requisite period.

On his Form I-687 application, which the applicant signed under penalty of perjury, he showed that he resided and in the United States since December of 1981. However, testimony provided by the applicant at the time of his interview regarding his residences was not consistent with residences shown by the applicant on this form. Further, the record contains what appear to be photocopied pages of the applicant's passport. These pages indicate that the passport was issued to the applicant in Senegal in March of 1996. The applicant did not indicate either on his Form I-687 or in his testimony to the CIS officer that he had not been present in the United States in 1996. This passport also shows an address of residence for the applicant at the time the passport was issued that appears to be in Bangui, Central African Republic, and is therefore not consistent with what the applicant showed on his Form I-687, where he indicated that he lived in Brooklyn, New York from December of 1988 to January of 2002.

The only evidence submitted with the application that is relevant to the 1981-88 period in question was an affidavit that did not relate to the duration of the requisite period and pages of the applicant's passport, which contained information that was not consistent with what the applicant showed on his Form I-687.

In denying the application the director noted the above, and that the applicant: did not have evidence of his entry into the United States from Canada in December of 1981; used an interpreter during his interview, which the director stated indicated that he did not speak English at a level that the director felt was consistent with someone who had continuously resided in the United States for twenty-five (25) years; was not credible when he stated that he worked selling clothes rather than going to school at the age of fourteen (14); indicated that he had never been sick during the requisite period during his interview yet provided a letter indicating that he suffers from mild gross motor developmental delay; and that he indicated during his interview with a CIS officer that he lost his passport yet submitted pages of a passport at the time of his interview.

Though the record does not show that the applicant submitted evidence establishing that he entered the United States from Canada in December of 1981, it is not clear whether the applicant entered with inspection. If the applicant entered without inspection, it would not be reasonable to expect him to have evidence of a lawful entry at that time. Therefore, that the applicant does not have proof of his entry in 1981 is not found to contradict other evidence in the record.

While the director notes that the applicant used an interpreter at the time of his interview after claiming to have resided in the United States for twenty-five (25) years, it is noted that the applicant's explanation for this lack of English fluency is consistent with what he has showed in the record, that he worked as a vendor selling exclusively to Africans. This, when combined with the letter in the record that indicates that the applicant has been diagnosed with a gross motor developmental delay which requires speech and

language therapy could account for the applicant's lack of fluency in English during his interview. Therefore, this is not found to contradict other evidence in the record.

Though the director states that it is not credible that the applicant worked selling African art rather than attending school when he was fourteen (14) years old, the director does not state why this was found to be implausible. Therefore, this is not found to contradict other evidence in the record.

Though the director notes that the applicant claimed that he was never ill during the requisite period, as previously noted, this letter states that the applicant has an ongoing condition, a developmental delay, rather than an illness and does not state when the applicant was diagnosed with this ongoing condition. Therefore, this is not found to contradict other evidence in the record.

Lastly, the director notes that the fact that the applicant indicated that he lost his passport contradicts the presence of photocopies of a passport issued to the applicant in 1996. However, it is not clear from the record which passport the applicant is referring to. Further, it is not unreasonable that the applicant could have lost a passport subsequently to making photocopies of that passport. Therefore, this is not found to contradict other evidence in the record.

On appeal the applicant attempts to explain these contradictions. He maintains that the documents submitted are sufficient to establish that he lived in the United States for the requisite period. The applicant goes on to say that he has "been in the United States for more than a decade without leaving the country." No additional evidence or statements were submitted with his appeal.

Though the director is found to have noted inconsistencies in her decision which the AAO finds are not clearly supportable, the director did correctly establish that applicant did not meet his burden of establishing, by a preponderance of the evidence, that he maintained continuous residency in the United States during the requisite period. He has submitted one affidavit that does not establish that he entered the United States before January 1, 1982. Photocopies of his passport contain evidence of absences from the United States that are not consistent with what he showed on his Form I-687 and indicate that the applicant claimed to be living in Africa rather than in the United States when the passport was issued in 1996, further casting doubt on the applicant's claim to have maintained continuous residence in the United States both during and after the requisite period. The medical letter submitted by the applicant does not establish dates of treatment and therefore is accorded no weight in establishing that the applicant maintained continuous residence in the United States.

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 two people concerning that period. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States.

The absence of sufficiently detailed 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 contradictory statements regarding his place of residence, because evidence in the record suggests he did not fully represent all of his absence on his I-687 application, and given his 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.