

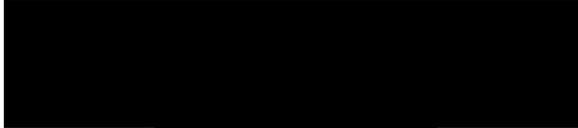
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**U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK Date: **APR 30 2008**
MSC-05-349-11597

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemarni", written over a faint circular stamp.

Robert P. Wiemarni, 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.

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. Specifically, the director stated that though the applicant submitted affidavits in support of his application, the affidavits did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. In saying this, the director noted that the affidavits did not contain one or more of the following: documentation identifying the affiants; proof that the affiants were in the United States during the statutory period; evidence that there was a relationship between the applicant and the affiants or current phone numbers at which the affiants could be reached. 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 resubmits a previously submitted affidavit and submits a new statement in which he provides details regarding his manner of entry into the United States during the requisite period, his absences from the United States and his attempt to apply for legalization during the original filing 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 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) 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. CSS Settlement Agreement paragraph 11 at page 6; 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) or the Service on September 14, 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 Jamaica, New York where he lived from 1981 until 2001. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from the United States once during the requisite period, when he traveled to Nigeria for three weeks in April 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was employed as a mechanic at [REDACTED], in Jamaica, New York. It is noted that the applicant did not indicate the name of his employer or dates associated with this employment on his Form I-687.

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. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) on November 15, 2005. In this NOID, the director stated that the applicant did not submit any evidence that: he entered the United States before January 1, 1982; that he was continuously physically present in the United States from November 6, 1986 until he was turned away by the Service when he tried to apply for legalization during the original filing period; or that he was admissible as an immigrant. The director of the National Benefits Center granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

The record shows that subsequent to receiving the NOID from the director of the National Benefits Center, the applicant submitted the following documents in support of his application that are relevant to the requisite period:

- An affidavit from [REDACTED] that was notarized on December 2, 2005 in which [REDACTED] states that he has known the applicant since October 1982. It is noted that [REDACTED] submitted a **photocopy of both his passport** and his New York State driver's license as proof of his identity. However, it is noted that here, the affiant did not indicate where he met the applicant or whether he first met him in the United States. He failed to state whether it was personally known to him that the applicant resided continuously in the United States for all or part of the requisite period. He failed to provide an address at which the applicant resided during the requisite period. He further failed to provide evidence that he himself resided in the United States during the requisite period. This affidavit, submitted without a phone number at which the affiant could be contacted, is significantly lacking in detail. Therefore, this affidavit carries very minimal weight in proving that the applicant was present in the United States for all or part of the requisite period. It carries no weight in establishing that the applicant entered the United States prior to January 1, 1982, as the affiant states he did not meet the applicant until October 1982.
- An affidavit from [REDACTED] that was notarized on December 5, 2005. In this affidavit, Mr. [REDACTED] states that he has known the applicant since August 1981. He clarifies that it was due to a typographical error that he first stated that he met the applicant in May of 1981. Here, [REDACTED] submitted a photocopy of his United States Passport as proof of his identity. However, though [REDACTED] states that he met the applicant in August 1981, he does not state the circumstances of his first meeting with the applicant, nor does he state that he first met him in the United States. He fails to provide an address at which it is personally known to him that the applicant resided in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period nor does he indicate that he knows that the applicant resided in the United States when he first met him or for any part of the requisite period. Therefore, this affidavit carries very minimal weight in proving that the applicant was present in the United States for all or part of the requisite period. It carries no weight in establishing that the applicant entered the United States prior to January 1, 1982, as the affiant does not indicate whether he met the applicant in the United States or elsewhere in 1981.
- An affidavit from [REDACTED] that was notarized on December 3, 2005. It is noted that the affiant submitted a copy of her driver's license as proof of her identity with this affidavit. Here, the affiant states that she has known the applicant since September of 1992. The issue in this proceeding is whether the applicant resided in the United States for the duration of the requisite period. Because this affiant did not meet the applicant until 1992, this affidavit is not relevant evidence for this proceeding.

In a second NOID in the record issued by the director of the New York District Office on April 20, 2006, that director stated that she found the applicant did not submit evidence that proved by a preponderance of the evidence that he entered the United States before January 1, 1982. The director went on to note that the affidavits submitted by the applicant in support of his application did not contain phone numbers at which the affiants could be contacted to verify the testimony contained in their affidavits. For those reasons, the director found that the applicant did not prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

In response to this second NOID, the applicant submitted the following:

- An affidavit from [REDACTED] that was notarized on May 10, 2006 and contains the affiant's phone number.
- An affidavit from [REDACTED] that was notarized on May 8, 2006 in which the affiant provided his phone number.
- An affidavit from [REDACTED] that was notarized on May 4, 2006. It is noted that Mr. [REDACTED] submitted a photocopy of his New York State Driver's License issued to him on July 12, 2004 as proof of his identity. In this affidavit, the affiant states that he has known the applicant since May 1981. However, though the affiant states that he met the applicant in May 1981, he does not state the circumstances of his first meeting with the applicant, nor does he state that he first met him in the United States. He fails to provide an address at which it is personally known to him that the applicant resided in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period nor does he indicate that he knows that the applicant resided in the United States when he first met him or for any part of the requisite period. Therefore, this affidavit carries very minimal weight in proving that the applicant was present in the United States for all or part of the requisite period. It carries no weight in establishing that the applicant entered the United States prior to January 1, 1982, as the affiant does not indicate whether he met the applicant in the United States or elsewhere when he met the applicant in 1981.

Though the director noted that her office received this additional evidence in support of the application timely, she stated that because the affiants failed to submit proof that they themselves resided in the United States during the requisite period, the affidavits from these affiants did not allow the applicant to prove by a preponderance of the evidence that he resided in the United States for the duration of the requisite period. Therefore, she denied the application on June 9, 2006.

On appeal, the applicant resubmits a photocopy of the previously submitted affidavit from [REDACTED] which states that [REDACTED] has known the applicant since May 1981 and he submits a statement. Details of this statement are as follows:

- A statement from the applicant notarized on June 26, 2006. Here, the applicant states that he first entered the United States on August 1, 1981. It is noted that in his affidavit, [REDACTED] states that he met the applicant in May 1981, several months before the applicant claims he entered the United States. However, because this affidavit does not state that the affiant met the applicant in the United States it is not clear whether this is an inconsistency. The applicant goes on to say that

he was absent from the United States for three weeks in 1987, when he returned to Nigeria because of the death of his sister. He asserts that he attempted to apply for legalization during the original filing date and was turned away.

It is not clear where [REDACTED] met the applicant or whether it was in the United States. However, as was previously noted, he indicates he first met the applicant in May 1981 when the applicant states he did not enter the United States until August of that year. The applicant did not submit additional documents other than his own statement in support of his application. Here, the AAO finds that the applicant has continued to fail to submit sufficient evidence to allow him to prove by a preponderance of the evidence that he entered the United States before January 1, 1982

In summary, the applicant has not provided evidence of residence in the United States during the requisite period that is sufficient to prove by a preponderance of the evidence that he did so. The statements and affidavits he submitted are significantly lacking in detail and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.