



U.S. Citizenship
and Immigration
Services

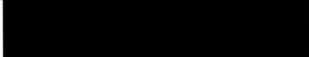
PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

L1



FILE:



Office: NEW YORK

Date: **AUG 05 2008**

MSC 06 054 17770

IN RE:

Applicant:



APPLICATION:

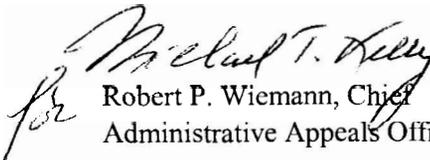
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


for 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, 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, on November 23, 2005. The director issued a Notice of Intent to Deny (NOID) the Form I-687 application on June 23, 2006. Upon review of the record, the director denied the application on August 15, 2006. On appeal, the applicant submits a brief statement.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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).

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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States in 2005. The applicant listed his address for the pertinent time period as: [REDACTED], New York, New York from 1981 to 1997. The applicant indicated he was self-employed as a cab driver through the New Harlem Car Service from 1981 to the date of the application. The applicant did not list any absences during the pertinent time period of January 1, 1982 to May 4, 1988. The applicant indicated that he belonged to the Masjid Malcolm Shalrezz [sic] association in New York City from 1981 to 2001.

The record also contains information from the applicant's interview on June 1, 2006. The applicant stated under oath that he had lived in Harlem on [REDACTED] for about 20 years; that he left the United States in May 1985 to visit family in Senegal and returned to the United States on April 23, 1986; and that he re-entered the United States with a B-2 visa. The record includes a copy of portions of the applicant's passport issued on February 24, 1986 in Dakar, Senegal and a B-1/B-2 visa issued April 23, 1986 in Abid Jan and a U.S. Immigration admissions stamp dated May 24, 1986 at New York, New York.

The record includes the applicant's Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) submitted March 29, 1989 used to establish the applicant's membership in the CSS/Newman class action. The applicant indicated on the Form I-687 that he had last entered the United States at the Mexico/Texas border without inspection on April 20, 1981; that he lived at [REDACTED] in New York from April 1981 to March 1989; that he belonged to the Masjid Malcolm Shabuzz association in New York City from April 1981 to 1989; that he left the United States twice: (1) to visit friends in the Ivory Coast from April 1986¹ to May 1986; and (2) to visit parents in Senegal from June 1987 to July 1987; and that he was a self-employed as a vendor from April 1981 to April 1988.

¹ The year "86" has a heavy line drawn on one side of the number "6;" it appears the number was first written as a "5" and then changed to the number "6."

The record also includes the following information submitted to establish the applicant's continuous residence in the United States for the applicable time period:

- A March 19, 1989 affidavit signed by [REDACTED] who declares that the applicant traveled to Senegal by crossing the Texas/Mexico border on June 1987 and returned to the United States in July 1987 entering without a visa at the Texas/Mexico border.
- A March 19, 1989 affidavit signed by [REDACTED] who declares that the applicant traveled to the Ivory Coast by crossing the Texas/Mexico border on April 1, 1986 and returned to the United States with a visa on May 24, 1986.
- A March 21, 1989 affidavit signed by [REDACTED] who declares that the applicant supported himself as a self-employed vendor from April 1981 to April 1988.
- A March 21, 1989 affidavit signed by [REDACTED] who declares that the applicant supported himself as a self-employed taxi driver from May 1988 to present 1989.
- A March 20, 1989 affidavit signed by [REDACTED] who declares that the applicant shared an apartment with him - apartment 4 [REDACTED] at [REDACTED] New York, New York - from April 1981 to March 1989.
- A March 20, 1989 affidavit signed by [REDACTED] who also declares that the applicant shared an apartment with him - apartment [REDACTED] at [REDACTED] New York, New York - from April 1981 to March 1989. The affiant does not include the address of the apartment which he shared with the applicant.
- A February 28, 1989 letter on the letterhead of the Masjid Malcolm Shabazz association signed by [REDACTED], public information, who states that the applicant is a member of the Muslim community and has been "here" since April of 1981 and that the applicant attends Friday, Jumah Prayer Services and other Prayer Services at the Masjid.
- A March 22, 1989 affidavit signed by [REDACTED] who declares that he has personal knowledge that the applicant lived at [REDACTED], New York City from April 1981 to March 1989; that he met the applicant when he and the applicant worked as vendors in 1981 and now he and the applicant work as self-employed taxi delivery drivers; and that the longest he has not seen the applicant is two weeks.
- A March 22, 1989 affidavit signed by [REDACTED] who declares that he has personal knowledge the applicant lived at [REDACTED] New York City from April 1981 to March 1989; that he and the applicant have been friends for a long time and that he and the applicant used to sell goods as peddlers in New York City, since 1981; and the longest he has not seen the applicant is (indecipherable) weeks.
- A March 22, 1989 affidavit signed by [REDACTED] who declares that that he has personal knowledge that the applicant lived at [REDACTED], New York City from April 1981 to March 1989; that he and the applicant used to sell goods in New York City, since 1981; and the longest he has not seen the applicant is two weeks.
- A July 5, 2001 affidavit signed by [REDACTED] who declares that he is personally acquainted with the applicant and has personal knowledge the applicant lived in New York from November 1981 to present; that a former colleague introduced the

applicant to him during a family dinner in 1981; and the longest he has not seen the applicant is two months.

- An original copy of a Certificate of Disposition from the Criminal Court of the City of New York, which the AAO accepts as demonstrating that the applicant was present in the New York City in September 1986 – when the offense was committed – and in June 1986, when sentence was imposed.
- A copy of motor vehicle license suspension notice, dated August 30, 1993, which the AAO accepts as evidence that the applicant was present in New York City on May 8, 1988, the date specified as the date of the violation.
- The record also includes a document titled "Request for Advanced Parole" dated September 2, 1992 wherein the applicant notes that his request for advance parole is because his mother is seriously sick. A July 20, 1992 letter signed by a doctor in Senegal is included with the request for advance parole. The Senegalese doctor states that the applicant's mother, [REDACTED], is dying and has requested that all her family members including the applicant come to see her. The applicant's statement in his 1992 parole request and the doctor's letter submitted in conjunction with the request directly and materially contradict not only the applicant's assertions to the effect that his mother had died in 1986 after a serious illness that required his returning to Senegal but also the copy of the death certificate that the applicant submitted on appeal. This significant and material contradiction places the credibility of the applicant and uncorroborated documentation presented by him in serious question.

The record also contains a copy of an FBI report showing that the applicant was arrested on September 3, 1986 for violation of a local law (misdemeanor). The record does not contain further disposition of this matter. The AAO accepts this document as evidence of the applicant's presence in the United States on that date.

On June 23, 2006, the director issued a NOID finding that the applicant had not submitted any evidence establishing that he continuously resided in the United States in unlawful status from June of 1981 until May 4, 1988 except for fraudulent affidavits. The director noted that the affidavits submitted did not contain any proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. The director also observed that the applicant's passport contained evidence of an entry into the United States on May 24, 1986 in New York and that the applicant had testified under oath that he had left the United States in May of 1985 to visit family in Senegal and had returned to the United States on April 23, 1986. The director determined that this eleven-month absence interrupted the applicant's continuous residence in the United States and that no emergent reasons for the length of the applicant's absence had been demonstrated.

In a July 14, 1985 response, the applicant stated that he had fully established beyond any reasonable doubt his class membership and that the tremendous amount of time that has elapsed since 1981 is why the judge ordered Citizenship and Immigration Services (CIS) to take duly signed and notarized affidavits. The applicant acknowledged his "long stay" in Senegal and indicated that it was due to the long illness of his mother who passed away after he had returned to the United States. The applicant

enclosed a copy of his mother's death certificate showing her date of death as December 30, 1986. The applicant also claimed that other possible evidence of his continuous residence in the United States had been lost in a robbery. The applicant enclosed a copy of a police report dated September 11, 1997 that refers to an attached list of reported stolen property; however, the record in this matter does not include the list.

The director determined on August 15, 2006 that the applicant had not submitted additional documentation sufficient to overcome the NOID.

On appeal, the applicant asserts that he has enclosed sufficient evidence to overcome the reasons for denial stated in the NOID. The applicant again asserts that his long stay in Senegal was due to the long illness of his mother, [REDACTED] who passed away on December 30, 1986, after he had returned to the United States.

Upon review of the totality of the record, the AAO finds that the applicant has not established his continuous unlawful residence in the United States for the requisite time period. The numerous affidavits submitted, including those from [REDACTED], [REDACTED] and [REDACTED] fail to provide details including where the affiants met the applicant, the nature and frequency of their contact, and the length of time the applicant was absent from the United States during the requisite period, if any absence was noted. Therefore these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite time period. In addition, some of the affidavits conflict with the applicant's testimony that he left for Senegal in 1986 and stayed for a long time. Three of the affiants declare that the applicant worked as a vendor/peddler from 1981 to 1989, information that conflicts with the information on the applicant's Form I-687 wherein the applicant states that he has been employed as a cab driver since 1981.

The February 29, 1989 letter signed by [REDACTED] stating that the applicant is a member of the Muslim community and attends Friday, Jumah and other Prayer Services is also deficient. The letter lacks the essential corroborative details that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) specifies for letters of attestations from organizations with regard to proof of an applicant's residence including: inclusive dates of the applicant's membership; the applicant's address(es) during membership; establishment of how the author knows the applicant; and establishment of the origin of the information being attested to.

Further, an applicant for temporary resident pursuant to Section 245A must establish continuous unlawful residence for the entire requisite time period. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. As noted earlier, the applicant has acknowledged absence from the United States for almost a year. The applicant's questionable

testimony that he returned to be with his dying mother has not demonstrated that his failure to return to the United States within 45 days was due to an emergent reason. *See* 8 C.F.R. § 245a.2(h)(1). As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

The AAO has already noted the contradiction of information presented by the applicant with regard to his mother (i.e, the contradiction between information submitted regarding his dying mother in 1992 in order to obtain advance parole and the assertion on appeal that his mother died from a serious illness in 1986.) In addition, the applicant indicates on the Form I-687 that he was self-employed as a cab driver from 1981 to the date of the application in November 2005, but indicates on the Form I-687 submitted March 29, 1989 used to establish his membership in the CSS/Newman class action, that he was a self-employed as a vendor from April 1981 to April 1988. The applicant also failed to list any absences between January 1, 1982 and May 4, 1988 on his November 2005 Form I-687, but stated in his June 1, 2006 interview that he left the United States in May 1985 to Senegal, and returned to the United States on April 23, 1986, with a B-2 visa. Also, in the Form I-485 that the applicant filed in January 1995, the applicant states "I have resided in the U.S. for 9 (nine years), " thus contradicting his assertion in this I-687 application that he has resided in the United States since before January 1, 1982. Further, the information on the applicant's March 29, 1989 Form I-687 appears to show the beneficiary's absence in April 1986 to May 1986 is to the Ivory Coast and not to the Senegal as noted in his interview and on appeal. As footnoted above, the AAO also questions the date on the March 29, 1989 Form I-687.

When viewed as a whole, the information in the record lacks credibility. The AAO finds that the documentation submitted lacks probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient documentation and the applicant's inconsistent statements and testimony comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons noted. 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. The applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

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