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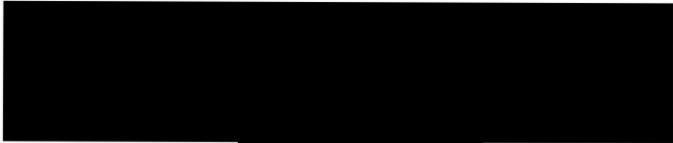
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEW YORK Date: **AUG 18 2008**
MSC-05-139-10308

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:



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.

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. 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 evidence the applicant submitted in support of his application did not allow him to establish 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel for the applicant argues that the director did not accord due weight to the evidence he submitted in support of his application.

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).

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States

has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 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 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 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) on February 16, 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 Bronx, New York from October 1981 to March 1993. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. The applicant showed his first and only absence from the United States to have been from March 1993 until April 1998. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he did not indicate any employment during the requisite period. It is noted that the applicant was born in March of 1969. Therefore he would have been 12 years old when he indicates he entered the United States and he would have remained a minor until 1987.

Also in the record are the notes from the CIS officer who interviewed the applicant on February 9, 2006. The officer's notes and a signed, sworn statement taken from the applicant at the time of his interview indicate that the applicant stated he and his mother entered the United States in 1981 and that his mother returned to Mali in 1984. He went on to say that he himself returned to Mali in March of 1985 and then did not return until April 30, 1998, when he entered with a visa. It is also noted that the applicant indicated at the time of this interview that he did not attend school in the United States during the requisite period. The applicant's testimony regarding an absence of more than three years during the requisite period casts doubt on whether the applicant maintained continuous residence in the United States for the duration of the requisite period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

Here, the applicant initially submitted the following evidence in support of his application that is relevant to his residence in the United States during the requisite period:

- An affidavit from [REDACTED] that was notarized on February 11, 2005. The affiant states that he has known the applicant in the United States since 1987. He states that he went with the applicant and his mother to the immigration office in New York City and the applicant and/or his mother was turned away at that time. It is noted that the applicant testified at the time of his interview with a CIS officer that his mother returned to Mali in 1984 and that he himself returned to Mali in 1985 and did not return to the United States

until 1998. Therefore, doubt is cast on this affiant's assertion that he went with the applicant and his mother to an office in the United States in 1987.

- An affidavit from the applicant that was notarized on February 11, 2005. The applicant states that he and his mother entered the United States in October 1981 and that he visited the immigration office in New York City with his mother and a friend in July 1987. He states that he was turned away by an immigration official at that time. However, it is noted that the applicant stated at the time of his interview with a CIS officer that he left the United States in 1985 and did not return again until 1998. Therefore, doubt is cast on the applicant's assertion that he went to an immigration office in the United States in 1987.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 14, 2006. In this NOID, the director stated that the applicant's testimony given during his February 9, 2006 interview with a CIS officer caused him to fail to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. In saying this, the director noted that during this interview, the applicant testified that he returned to Mali in March 1985 and that he remained in Mali until his re-entry into the United States on April 30, 1998. The director determined that this indicated that the applicant had an absence of three years and two months, which represents a break in residency during a single absence of more than 45 days. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted the following additional documentation in support of his application:

- An affidavit from [REDACTED] that was notarized on an unspecified date. The affiant submitted a photocopy of his birth certificate. It is noted that the word, "void" appears on this birth certificate. The affiant also submitted a photocopy of his New York State Driver's License issued in 2004. The affiant states that he first met the applicant at the Harlem Hospital in December 1981 when the applicant was his patient there. He states that he is a doctor and that the applicant was his patient for three to four years. He states that he saw the applicant 12 times each year.
- A bill from the Harlem Faculty Practice that was issued to the applicant on November 12, 1981. This bill is for services obtained by the applicant on March 8, 1981 and July 2, 1981.

A photocopy of a New York City Public School Verification of Pupil Registration for Public School 114 that is dated October 1, 1984. This document indicates that the applicant was registered in eighth grade in 1984. It is noted that at the time of the applicant's interview with a CIS officer on February 9, 2006, he indicated that he did not attend school in the United States during the requisite period.

- A receipt showing rates of return for a bank account from November 20 to December 19, 1985. This receipt does not indicate a name associated with this account. It cannot clearly be associated with the applicant and, therefore, it carries no weight as evidence of the applicant's residence in the United States during the requisite period.

The director denied the application for temporary residence on December 5, 2006. In denying the application, the director noted that her office received additional evidence from the applicant in response to her NOID, but stated that these documents, when considered together with other evidence in the record, did not allow the applicant to satisfy his burden of proof. The director noted in her decision that the applicant did not submit evidence or a statement that addressed his break in residency during the requisite period. Therefore, the director found that the applicant did not meet his burden of establishing that he resided continuously in the United States for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the director failed to accord due weight to evidence the applicant submitted in support of his application. He argues that CIS did not contact Mr. _____ to verify testimony he provided in his affidavit. Counsel further asserts that CIS did not attempt to verify the letter issued by Public School 114. Counsel states the director did not note other evidence, including the medical bill issued by Harlem Faculty Practice dated November 12, 1981 and documents proving _____'s identity. Therefore, counsel concludes that the director's decision was made without proper consideration of these supporting documents.

The AAO has reviewed the evidence in the record and has determined that the applicant has failed to meet his burden of proof. Though the director did not note all of the supporting documentation submitted by the applicant in her decision, she ultimately denied the applicant because at the time of his interview with a CIS officer, he indicated that he failed to maintain continuous residence in the United States for the duration of the requisite period. The applicant testified and submitted a sworn statement stating that he was absent from the United States from March 1985 until April 30, 1998, or for approximately three years and two months of the requisite period. This absence constitutes a single absence during the requisite period that exceeded 45 days. He has not stated that his untimely return was due to an "emergent reason." Therefore, regardless of the evidence the applicant has submitted that proves he was in the United States from a date prior to January 1, 1981 until March 1985 the applicant has failed to establish that he maintained continuous residence in the United States for the entire duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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.