

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



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

PUBLIC COPY

LI

FILE:

MSC 05 239 14886

Office: NEW YORK

Date:

FEB 08 2008

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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 May 27, 2005. The director denied the application, noting that the applicant failed to submit additional evidence in response to a Notice of Intent to Deny (NOID) dated April 10, 2006 within the time allotted. Therefore, the director found that 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 for the reasons stated in the NOID. The director determined 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 asserts that he has been living in the United States for the requisite periods and that he submitted affidavits from acquaintances who lived here and knew him in the United States during the statutory periods. He states that he believes he is eligible for temporary resident status.

A review of the record reveals that the director issued a NOID on April 10, 2006 and that the applicant's response to this NOID was in fact received on April 26, 2006. The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). Therefore, all evidence submitted in support of the application, and the credibility and sufficiency of each piece of evidence, will be discussed herein.

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 27, 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 indicated that he resided at [REDACTED], in New York, New York, from October 1981 until June 1986, and at [REDACTED] in New York, New York, from June 1986 until 1993. At part #33, where asked to indicate all employment in the United States since entry, the applicant stated that he has been self-employed as a vendor in New York, New York since 1993. At part #32, where applicants were asked to indicate all affiliations or associations with churches, clubs or other organizations, the applicant indicated an affiliation with Murid Islamic Community since 1990.

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 applicant did not submit supporting evidence in support of his application. Accordingly, on November 15, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) advising the applicant that he would be granted 30 days in which to submit evidence of his continuous residence and physical presence in the United States during the requisite periods.

In response to the NOID, the applicant submitted a statement in which he explained that he first came to the United States in 1981 from Senegal by ship to Canada, and then entered the United States through New York. He stated that he did not retain any documents that would establish his entry in 1981 or his continuous residence during the requisite period, but noted that he can provide affidavits from "former friends" and from [REDACTED] where he claim to have gone for prayer since 1981. It is noted that the applicant did not indicate on his Form I-687 that he attended this mosque.

In support of his statement, the applicant submitted the following evidence:

An affidavit of witness from [REDACTED], who states that he met the applicant in New York in 1985 at a Senegalese holiday celebration. He indicates that he currently resides in New York, New York. The affiant did not provide proof of his identity, evidence that he resided in New York during the requisite period, or a telephone number where he can be reached. He does not indicate how frequently he saw the applicant after meeting him in 1985, or whether he had an ongoing acquaintance with him other than one meeting at a social event. Nor does he provide any verifiable information regarding the events and circumstances of the applicant's residence in the United States, such as his address during the requisite period, which would tend to lend credibility to his claim that he has known the applicant for 20 years. Because of the significant lack of detail, this affidavit can be given very limited evidentiary weight in establishing the applicant's residence in the United States from 1985 through the end of the requisite period.

An affidavit of witness from [REDACTED], who states that he met the applicant in New York in January 1984 at "the meeting of Senegal association." He states that he and the applicant have been very close and always attend meetings together. [REDACTED] did not provide proof of his identity, a telephone number, or evidence that he resided in the United States during the requisite period. Although he states that he met the applicant at a meeting of the "Senegal association" and regularly attended meetings with him, it is noted that the applicant did not indicate on his Form I-687 that he was ever affiliated with any such association, thus casting doubt on [REDACTED]'s claim that he attended such meetings with the applicant. The affiant does not provide any verifiable information such as the

applicant's address during the requisite period, where the claimed meetings were held, or how often he saw the applicant during the requisite period. Given the affiant's claim of a 20-year friendship with the applicant, the lack of detail regarding the events and circumstances of the applicant's residence is significant and further diminishes the probative value of the affidavit.

A Citizenship and Immigration Services (CIS) officer interviewed the applicant in connection with his application on March 13, 2006. On April 10, 2006, the director issued a NOID, advising the applicant that the affidavits he submitted in support of his claim appeared neither credible nor amenable to verification. The director noted that there was no proof that the affiants have direct, personal knowledge of the events and circumstances of the applicant's residence, nor any evidence that that the affiants were present in the United States during the statutory period. The director further noted that the affidavits only attested to his residence in 1984 and 1985 and did not cover the entire relevant period. The director granted the applicant 30 days in which to submit additional evidence to establish his eligibility pursuant to Section 245A of the Act.

In a response dated April 23, 2006, the applicant provided a telephone number for [REDACTED] and one additional affidavit from [REDACTED]. [REDACTED] states that he is currently a resident of Bronx, New York and that he first met the applicant in Manhattan in 1981, where they were attending religious services "at the mosque in Manhattan." He states that he has personal knowledge that the applicant resided at [REDACTED] in New York from October 1981 to June 1986, and at [REDACTED] from June 1986 to 1993.

As noted above, the applicant did not indicate that he belonged to a mosque or other religious organization during the requisite period, thus [REDACTED]'s claim that he regularly attended a mosque with the applicant is inconsistent with the applicant's own statements on Form I-687 and not credible. The affiant does not identify which "mosque in Manhattan" he attended or indicate how frequently he saw the applicant during the requisite period. Although he provides addresses that are consistent with information provided on the applicant's Form I-687, it cannot be determined based on his brief statement that he had direct, personal knowledge of the applicant's residence in the United States for the duration of the requisite period. Because it provides information that conflicts with the applicant's own testimony and is significantly lacking in detail, this affidavit is lacking in probative value.

The director denied the application on August 29, 2006. As noted above, the director incorrectly noted that the applicant had failed to submit a response to the NOID, and therefore concluded that he had not overcome the grounds for denial stated therein.

On appeal, the applicant states that he submitted evidence and affidavits from acquaintances who have known him to be living in the United States during the requisite period. He states that he believes he is eligible to be granted temporary resident status.

Upon review, the applicant has not established by a preponderance of the evidence that he continuously resided in the United States in an unlawful status during the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, CIS 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.

As discussed above, the evidence the applicant has submitted to demonstrate that he resided in the United States for the requisite period is not relevant, probative, and credible. The applicant has not provided any evidence of residence in the United States for the duration of the requisite period or of entry to the United States before January 1, 1982 except for his own assertions and the three affidavits noted above. The affidavits lack credibility and probative value for the reasons noted.

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