

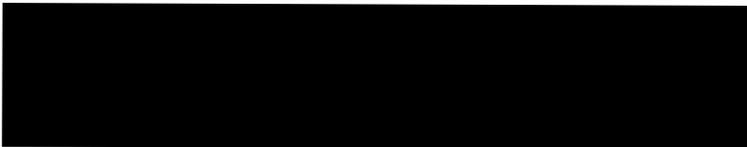
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and Immigration
Services

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FILE:

MSC 05 561 12213

Office: NEW YORK

Date:

FEB 20 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:



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. 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 June 13, 2005. The director determined that the applicant had not established by a preponderance of the evidence that the applicant had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting that there were several discrepancies in the record of proceeding, some for which additional documentation were submitted, some not answered and some for which certain uncorroborated assertions were made by counsel that will be examined in this discussion. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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, counsel asserts that the applicant has met his burden of proof. Further, counsel submitted a statement from the Interfaith Medical Center, Brooklyn, New York, that a medical record for the applicant is no longer in existence. Counsel contends that the applicant was treated at the center in 1981.

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).

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. 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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant’s whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver’s license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the decision regarding a requirement for such “tangible evidence” will be withdrawn. The AAO also notes that an applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency for the “statutory period from January 1, 1982 until May 4, 1988”; that portion of the decision regarding residence will also be withdrawn. An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 a Form I-687 application or was caused not to timely file.

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.

Here, the submitted evidence consists of the following relevant documentation: a Leaving Certificate & Testimonial from Ene's School of Commerce, Owerrinta-Aba, Nigeria, dated August 1, 1979; the applicant's diploma from Texas Southern University, Houston, Texas, dated May 16, 1981, conferring upon the applicant a Bachelor of Science degree in Technology; the applicant's diploma from Texas Southern University, Houston, Texas, dated May 17, 1986, conferring upon the applicant a Master of Science degree in Technology; a photo identification card (student number 87599) issued by Texas Southern University, Houston, Texas, to the applicant along with a signed statement by the applicant that he attended that university from 1978 to 1986; an affidavit¹ by [REDACTED], a family relation, (brother-in-law) concerning the applicant made December 5, 2005; un-notarized statements on the photocopied letterhead of the Family Health Center, St. Albans, New York dated March 10, 2006, and April 14, 2006, by [REDACTED], M.D.; a partially illegible copy of a notarized statement made by [REDACTED], St. Albans, New York, that the applicant was his tenant at [REDACTED] Brooklyn New York, from December 1981 to May 1988; a signed statement made by [REDACTED] dated April 17, 2006, confirming the aforementioned statement; a cover letter by the applicant dated May 4, 2006, with an attached letter dated April 27, 2006, from Pastor [REDACTED], Deeper Life Bible Church, 213-225 144th St., Bronx, New York 10451-1705, that the applicant is a member of the church located at 19 Merrick Blvd., Jamaica, New York; and the applicant's certificate of marriage from the Federal Republic of Nigeria evidencing his marriage that occurred there on July 16, 1988.²

A review of the record demonstrates that the applicant has submitted evidence of study in the United States at the university level. As already stated, the applicant submitted a diploma from Texas Southern University, Houston, Texas, dated May 16, 1981, conferring upon the applicant a Bachelor of Science degree in Technology; the applicant's diploma from Texas Southern University, Houston, Texas, dated May 17, 1986, conferring upon the applicant a Master of Science degree in Technology. Since the applicant was born on November, 22, 1964, the applicant would have entered Texas Southern University, Houston, Texas, at the age of 13 years and nine months, three years before his reputed first entry into the United States in November 1981. Students in the United States

¹ Mr. [REDACTED]'s affidavit stated in summary that "we renewed our relationship in December 1981 here in the United States" and that he and his brother-in-law have been close friends since the applicant's stay in the United States. This scant statement does not provide objective or verifiable information of the applicant's residences in the United States to determine whether the fact to be proven, the applicant's residency in the United States for the required period, is probably true.

² According to the certificate, the applicant's residence at the time of the marriage July 16, 1988 was [REDACTED], Lagos, Nigeria.

usually enter tertiary education after 12 years of primary and secondary education in their 18th year.³ Therefore the applicant's evidence of his education at the Texas Southern University, Houston, Texas and the assertion of his residence in Texas during the same period, are not persuasive of his residency in the United States during the required periods.

Also, assuming the applicant's date of entry into Canada and then the United States in November 1981 is to be believed, it is not plausible that the applicant could have started school in Texas in 1978, three years before his arrival into the United States. The applicant has submitted a Leaving Certificate & Testimonial from Ene's School of Commerce, Owerinta-Aba, Nigeria, dated August 1, 1979, that indicates during that approximate period (1978/1979), the applicant was in Nigeria. There is insufficient evidence in the record to determine conclusively whether or not the applicant was in Nigeria or the United States during this period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

According to counsel's letter dated May 3, 2006, the applicant arrived in Canada as a stowaway aboard a ship in that country and subsequently entered the United States in November of 1981.⁴ Counsel has also provided documentation that the applicant was already in Texas attending the Texas Southern University from 1978 to 1981, then in 1986. Further, the applicant has also submitted contradictory evidence that he resided as a tenant at [REDACTED] Brooklyn New York, from December 1981 to May 1988, according to statements given by [REDACTED] Block 30, entitled "Residences in the United States" of the applicant's CIS Form I-687 signed by the applicant on June 7, 2005, stated that the applicant resided at [REDACTED] Brooklyn, New York from November 1981 to May 1988. There are inconsistency in information and statements provided by the applicant such that the AAO is unable to determine the truth of the matter. The applicant, as pointed out by the director, has not provided any independent, objective and verifiable documentation such as rent receipts, utility bills, cancelled checks or mail addressed to any location received by the applicant to verify continuous residence in the United States during this period.

The applicant has submitted un-notarized statements by J. [REDACTED] M.D. on the photocopied letterhead of the Family Health Center, St. Albans, New York dated March 10, 2006, and April 14, 2006. The letters do not state where [REDACTED] saw the applicant. According to J. [REDACTED] M.D., the applicant has been his patient since December 19, 1981. The director questioned this statement

³ See the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). ACCRAO, according to its website, www.accrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries."

⁴ Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

since [REDACTED] graduated medical school in Mexico in 1985. As the applicant has asserted variously that he was in Houston, Texas from 1978 through 1981, and then in 1986, but also living at two residences in New York, there is no clear evidence where the applicant actually resided and was treated assuming one of the residence locations, the States of Texas or New York, given by the applicant is correct. Since [REDACTED] statements have been contradicted by the evidence as presented by the applicant, the AAO cannot rely on his statements as submitted.

The applicant has submitted a cover letter by the applicant dated May 4, 2006, with an attached letter dated April 27, 2006, from Pastor [REDACTED] Deeper Life Bible Church, 213-225 144th St., Bronx, New York 10451-1705, that the applicant is a member of the church located at 19 Merrick Blvd., Jamaica, New York. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) permits attestations by churches to the applicant's residence by letter which identifies the applicant by name, is signed by an official (whose title is shown), shows inclusive dates of membership, states the address where applicant resided during membership period, includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery, establishes how the author knows the applicant, and establishes the origin of the information being attested to, in this case by [REDACTED]. A review of the letter dated April 27, 2006, demonstrates that it does not state the dates of the applicant's membership, does not include the seal of the organization, and does not establish how the author knows the applicant. [REDACTED] does not indicate that he has personal knowledge of the applicant's whereabouts during the requisite time period.

The evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States for the requisite period. The record lacks sufficient evidence that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period. The AAO finds that, as explained above, his absence during those years is not relevant to establishing eligibility for temporary residence under the CSS/Newman Settlement Agreements. It is clear from the record, however, that the applicant claimed on his Form I-687 application and confirmed during his interview with CIS on July 28, 2006, that he resided outside the United States during the above noted time periods. Also regarding residence in the United States during the requisite period, the applicant has not submitted relevant, probative, and credible evidence of his entry into the United States *before* January 1, 1982.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 paucity of credible supporting documentation and the applicant's reliance upon two affidavits, documents with minimal probative value, it is concluded that he 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.