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FILE: [Redacted]
MSC-04-342-10321

Office: NEW YORK

Date: **JAN 09 2008**

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. 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 September 6, 2004. The director determined that the applicant had failed to establish that he had entered the United States before January 1, 1982; had resided continuously in the United States in an unlawful status since that date through May 4, 1988; and was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988. The director denied the application as 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.

The director also noted in his decision that the applicant had submitted affidavits that were not credible and that he had failed to address the deficiencies detailed in the Notice of Intent to Deny, dated July 29, 2005. Specifically, the director stated that during his Form I-687 application interview the applicant stated that he first entered the United States when he was ten years old and that the record showed his date of birth to be May 10, 1973. The director concluded that the applicant was not eligible for Temporary Resident Status because he did not enter the United States until some time after May of 1983, which is subsequent to January 1, 1982.

On appeal, the applicant claims that he has previously provided documentation to support his claim of eligibility to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

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 and the 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 issue in this proceeding is whether the applicant has provided sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he is a native and citizen of the Gambia, has resided in the United States for 20 years, and has known the applicant since 1980. The affiant's statement lacks sufficient details of his relationship with the applicant. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this letter. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which the affiant maintained communications with the applicant. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he is a native and citizen of the Gambia, has resided in the United States for 20 years. The affiant also stated that he is a friend of the applicant's and that he accompanied the applicant to the immigration office in August of 1990, at which time he was told by the immigration officer that he did not qualify for CSS LULAC. There is nothing in the record to support the affiant's statement. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this letter. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which the affiant maintained communications with the applicant. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application on August 4, 2006.

On appeal, the applicant reasserts his claim of eligibility for the benefits sought and submits as evidence an affidavit from [REDACTED] dated August 17, 2005. In the affidavit the affiant states that he has known the applicant since 1981 and that he does not know of the applicant having any problems in this country.

The applicant has failed to submit any evidence that is relevant, probative and credible. It is further noted that the applicant fails to address on appeal the discrepancies stated by the director in the decision dated August 4, 2006. The affidavit submitted by the applicant on appeal is not signed. There is no evidence in the record to show the nature of the affiant's relationship with the applicant. Again, the affiant has not provided information pertaining to the applicant's address during the requisite period. The affiant has not

provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this letter. The affidavits submitted lack specificity and can therefore be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

Regarding residence in the United States during the requisite period, the record contains the affidavits noted above and the applicant's statements asserting his entry into the United States before January 1, 1982. It is noted that the applicant indicated on his Form I-687 application part #16 that he last entered the United States on November 30, 1981. This evidence is inconsistent with the applicant's declaration during his interview that he first came to the United States when he was 10 years old. The evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982, and resided in the country for the requisite period.

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 absence of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and has 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.