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



U.S. Citizenship
and Immigration
Services

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JUL 31 2008

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date:

MSC 05 337 12087

IN RE: Applicant:

[REDACTED]

APPLICATION:

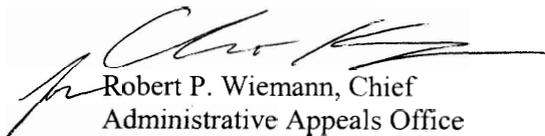
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 Director, National Benefits Center. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and thereafter continuously resided in the United States in an unlawful status. On appeal, the applicant reiterated his claim of continuous residence in the United States during the requisite period.

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 Immigration and Nationality Act (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).

As to the requirement of continuous residence in the United States from prior to January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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). To meet his or her

burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.

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, 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.

On the Form I-687 application the applicant stated that he resided continuously in the United States since December 1980, with the exception of a trip to Canada during November 1986, and returning to his home country, from September 1988 to November 2000. The applicant also stated, on the Form I-687 application, that he lived at [REDACTED] from December 1980 to September 1988.

The applicant submitted no evidence in this matter to support his claim that he lived in the United States during the period of requisite residence. This, in itself, was sufficient reason to deny the instant application.

However, the record contains relevant evidence that the applicant submitted pertinent to a request for asylum, and materials pertinent to action taken on that request, some of which is relevant to the instant application.

- The record contains a copy of the applicant's Form I-589 Application for Asylum, which was submitted on February 14, 2001. On it, the applicant stated that he last left Mauritania on November 25, 1991, that he entered the United States on November 3, 2000, and that he had never previously entered the United States. This office notes that this assertion is contrary to the applicant's assertion on the instant Form I-687 application that he continuously resided in the United States during the period of requisite residence.

The applicant stated on that Form I-589 application that he married [REDACTED] both his and her place of birth, on July 10, 1983. This office notes that this

contradicts his statement on the Form I-687 application, that he was living in New York City and never left the United States from December 1980 to September 1988.

The applicant further stated that his wife was, on the date of the application, in Senegal and that she had never been to the United States. He stated that he had two children, born January 18, 1986 and March 27, 1988, that both were born in Mauritania, had never been to the United States, and were then living in Senegal. This claim also appears to conflict with the applicant's assertion that, from December 1980 to September 1988, he lived in New York City and never left the United States.

- The record contains a transcript of a removal proceedings hearing on September 15, 2003, in which the applicant stated, under oath, that he has four children, all born in Senegal, one on January 18, 1986, one during March 1988, and twins born October 5, 2000.¹ Again, this office notes that the applicant's sworn testimony conflicts with his statement, on the Form I-687 application, that he lived in the United States, in New York, from December 1980 to September 1988, without ever leaving the United States.

In a Notice of Intent to Deny (NOID), dated December 16, 2005, the director stated that the applicant failed to submit evidence demonstrating his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence. In response the applicant submitted an undated letter in which he stated that he had no other evidence in support of his claim of continuous residence during the requisite period.

In the Notice of Decision, dated August 12, 2006, the director indicated that the applicant had not provided sufficient evidence and denied the application.

On appeal, the applicant reiterated his claim of continuous residence in the United States during the period of requisite residence, but stated that he was unable to provide additional evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Not only has the applicant submitted no evidence to support his claim of continuous residence in the United States during the requisite period, but the information he provided, under oath, on his Form I-589 application cannot be reconciled with his claim of continuous residence. The applicant has not demonstrated his eligibility.

¹ The applicant stated that he had not received word of their birth when he submitted his Form I-589 and did not, therefore, include them on that form.

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.