

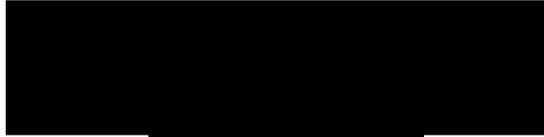
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**U.S. Citizenship  
and Immigration  
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FILE:

MSC 05 187 12378

Office: LOUISVILLE

Date:

JUN 27 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. 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, Louisville. 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 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. 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. The director found that the evidence of record regarding the applicant's residence during the requisite period was "insufficiently detailed, consistent, and plausible" to establish his eligibility. The director also found that the applicant, in an interview on January 5, 2006, stated that he departed the United States in 1986 and did not return until 1991, thereby indicating that the applicant did not meet the residency requirements of the application.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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 she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavit

- The applicant submitted a single affidavit from [REDACTED] in support of his application. The affidavit appears on a preprinted form.

[REDACTED] states in his sworn affidavit that he has known the applicant since 1982 “from selling him clothing.” The affiant further states that he has personal knowledge that the applicant has resided in the United States as follows:

From 1981 to 1986 in New York;

From 1987 to 1992 in New York; and

From 1993 to 2000 in New York.

The applicant indicates on the Form I-687 that he resided in the United States during the requisite periods as follows:

From 1981 to 1986 in New York; and  
From 1987 to 1992 in New York

The applicant does not indicate on the Form I-687 that he was absent from the United States at any time during the requisite period.

#### ADDITIONAL EVIDENCE

- A copy of a United States B-2 visa issued April 2, 1999;
- Two sheets bearing what appear to be copies of the front and back covers of a Senegalese Passport and two internal pages that bear the printed number [REDACTED];
- A copy of a travel agency receipt for airline tickets dated July 2, 1981 noting an itinerary of "Dakar – New York – Dakar;"
- A copy of an Employment Authorization Card valid from 6/27/2005 – 6/26/2006;
- A Kentucky Identification Card issued on September 22, 2005;
- A copy of a statement from [REDACTED] dated 11/15/2005 indicating that the applicant is in need of medical treatment – the statement references "January 82," but does not provide copies of medical records or otherwise explain what the "January 82" reference is in relation to;
- A copy of two pages of a Senegalese passport issued in May of 2003, and bearing a U.S. Immigration stamp for admission on November 28, 2003; and
- Interview notes taken at the applicant's legalization interview indicating that the applicant stated that he arrived in the United States by air in July of 1981, and that he traveled outside the United States in 1986 for a family visit and returned in April of 1999.

The applicant does not indicate on the Form I-687 that he traveled outside the United States after his stated arrival in 1981.

The sole affidavit presented in support of the application failed to provide detailed evidence establishing how the affiant knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and

whereabouts during the requisite period covered by the applicant's Form I-687. The affiant stated simply that he knew the applicant from selling him clothing in New York. No additional details or supporting documentation was provided. To be probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must present sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 applicant's reliance upon documents with minimal probative value, it is concluded that the affidavit submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

The additional evidence submitted and listed above does not establish the applicant's residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

It should be further noted that the applicant indicates on his Form I-694 Notice of Appeal, that he returned to the United States in April of 1999 after a visit to Senegal. The entry date on his passport of April 2, 1999 lends credence to this statement. It is also noted, however, that, as stated in the director's denial of the application, the interview notes for the applicant's legalization interview indicate that the applicant left the United States in 1986 (during the requisite period) and returned in April of 1999. This absence from the country exceeds 45 days and represents a disruption of the applicant's claimed unlawful continuous residence. 8 C.F.R. § 245a.2(6)(h)(i). The statements made by the applicant during his interview contradict the information provided by him on the Form I-687 where he fails to list any departures from the country during the requisite period, and the applicant has failed to explain that discrepancy. The contradictory information is material to the substance of the applicant's claim in that it directly bears on whether he has established his claim of continuous residence in this country during the requisite period. It is incumbent upon the petitioner 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. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, 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.