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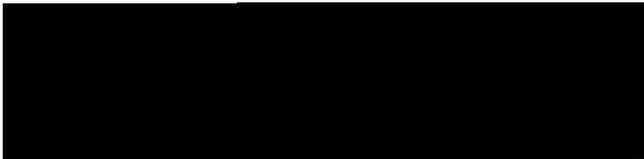
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-04-307-11178

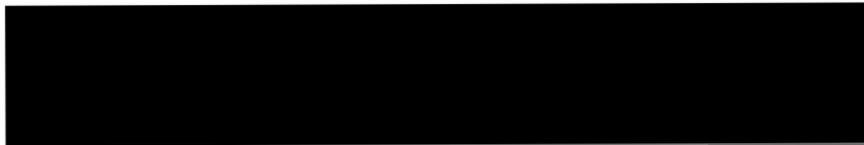
Office: NEW YORK

Date: MAR 27 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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed, your file has been sent to the National Benefits Center. 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 District Director, New York, denied the application for temporary resident status filed 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). 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 August 2, 2004 (together comprising the I-687 Application). 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. In a Notice of Intent to Deny, issued on August 19, 2005, he specifically noted that the applicant had submitted only one affidavit as proof of his continuous residence, a letter from [REDACTED] but that the information in the letter could not be verified when the mosque was contacted. The director denied the application on August 8, 2006, finding that the applicant had failed to overcome the grounds for denial and, as the applicant had not met his burden of proof, he was 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 had submitted evidence that clearly shows that he was in the United States prior to January 1, 1982 and that he is eligible for the benefit sought. He submits one additional document that is relevant to the requisite period, a letter from an acquaintance, [REDACTED]

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).

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), “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 during the initial legalization filing 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 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). 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. 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 affidavits indicating specific personal knowledge of the applicant's whereabouts during the time period in question rather than fill-in-the-blank affidavits that provide generic information.

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 furnished sufficient credible evidence to demonstrate by a preponderance of the evidence that he entered before 1982 and resided in the United States for the requisite period, which, as noted above, is from prior to January 1, 1982 through the date when he was discouraged from filing his I-687 Application, between May 5, 1987 and May 4, 1988. In this case, the applicant has failed to meet this burden.

The applicant has submitted several documents as evidence that he was in the United States in 1990 and afterwards. Such evidence, however, is not probative of residence during the requisite period and will not be considered here. The following evidence relates to the requisite period:

The above mentioned letter on letterhead of N [REDACTED], a mosque in New York City, dated May 8, 1990 and signed by [REDACTED] "Public Information." The letter states that the applicant "is a Member of the Muslim Community and he has been here since March of 1981. He attends Friday, Jumah Prayer Services and other Prayer Services here at the Masjid." The director had concluded in the Notice of Intent to Deny that the letter was "of suspect veracity" because when Citizenship and Immigration Services (CIS) contacted the mosque in March 2004, they were

informed that [REDACTED] had not been there in over ten years and that the mosque could not confirm his statements. The AAO notes that this indicates that [REDACTED] may have been at the mosque in 1991 when the letter was provided; the AAO agrees, however, that the letter lacks probative value for the following reasons: The letter is not notarized and is not accompanied by any form of identification for [REDACTED]; as noted, the information could not be verified by the relevant organization. The letter is also inconsistent with information provided by the applicant on his I-687 Application, where, at Part 31, which requests the applicant to list all affiliations or associations, he listed "Poular Speaking Ass[ociation] of N.Y., Brooklyn, N.Y." from 1991 to the present, but failed to list any affiliation with the mosque. Moreover, the letter fails to indicate where the applicant resided during the time he attended the mosque. It also fails to establish how the author knows the applicant; and fails to establish the origin of the information provided, contrary to regulatory requirements found at 8 C.F.R. § 245a.2(d)(3)(v). Given these failings and contradictions, the letter has no weight as evidence of the applicant's residence in the United States during the requisite period.

- A statement on letterhead of Air Afrique in New York, dated March 28, 1991 and signed by "[REDACTED] [REDACTED], Director AIR AFRIQUE in North America." [REDACTED] certifies that the applicant "has traveled on board RK050/15 December, 1987 from John Fitzgerald Kennedy Airport to Dakar, Senegal." As with the above noted statement, the letter is not notarized and is not accompanied by any form of identification for [REDACTED] or any indication that he is the Director as claimed. The statement is also inconsistent with information provided by the applicant on his I-687 Application, where, at Part 32, which requests the applicant to list all absences from the United States since entry, he lists only one absence during the requisite period – travel to Canada on business from November to December 1987. The statement refers only to a flight to Senegal by the applicant in 1987 and does not indicate any direct personal knowledge of the applicant's residence in the United States at that time. The statement has minimal weight as evidence of the applicant's presence in the United States during the requisite period.
- A notarized letter from [REDACTED] dated August 20, 2006. [REDACTED] states that he has been a street vendor since 1981 and that in 1982 he met the applicant, who would often stop at his stand and converse, and that over the years they became good friends. He provides his address in the Bronx, New York, and two telephone numbers. The letter provides no further details regarding the circumstances of the applicant's residence in the United States or of the claimed relationship of over 20 years; it gives no indication that [REDACTED] has any specific personal knowledge of the applicant's whereabouts during the relevant time period other than that they would see each other in the street. The letter can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

To support his claim, the applicant has submitted only the three letters noted above. For the reasons noted above, these documents have minimal probative value as evidence of the applicant's residence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and I-867 Application, in which he claims to have entered the United States in January, 1981 and resided in New York until 1989;

and a copy of several pages of his Malian passport, issued in Senegal on November 5, 1987. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry in 1981 and residence in New York are not supported by any credible evidence in the record. In fact, the documents he has submitted – letters from [REDACTED] and [REDACTED] – contradict his own statements on his I-687 Application, where he failed to indicate any affiliation with [REDACTED] and where he failed to indicate any travel to Senegal in 1987. Moreover, both the letter from Air Afrique and the applicant's statement, signed under oath by applicant at his CIS interview on July 19, 2005, asserting that the applicant traveled to Senegal on December 15, 1987, are inconsistent with the I-687 Application and with the evidence that his passport was issued in Senegal on November 5, 1987. These inconsistencies and contradictions 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 lack of credible documentation in support of his application, and the inconsistencies and contradictions noted above, 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.