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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

MSC 05 131 12979

Office: NEW YORK

Date:

MAR 31 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:

[REDACTED]

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
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 February 8, 2005. The applicant was interviewed on July 18, 2005. The director subsequently issued a Notice of Intent to Deny (NOID) the application on August 15, 2005 and on August 7, 2006, denied the petition.

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 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 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.

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.

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 have been physically present in the United States from November 6, 1986 until the date of attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application. In support of the initial application, the applicant submitted an affidavit dated January 28, 2005, from [REDACTED] who indicates that he has known the applicant before December 31, 1981 in New York. The affidavit does not include proof that the affiant was in the United States during the requisite time period. In addition, the affiant does not provide any details of the relationship sufficient to establish the applicant's continuous presence in the United States for the requisite periods. The AAO does not find this affidavit probative as it does not provide any corroborating detail regarding the circumstances and events of the relation between the affiant and the applicant.

In the applicant's interview on July 18, 2005, the applicant testified that his date of birth is July 12, 1974, that he entered the United States illegally from Canada when he was eight years old, and that he lived with his father's friend, [REDACTED], until 2000. The AAO observes that if the applicant was born in July 1974 and he entered the United States when he was eight years old, the applicant would have entered the United States in 1982, not 1981.

At his interview, the applicant also provided an affidavit dated July 14, 2005 from [REDACTED] who claims to be a citizen of the United States. Mr. [REDACTED] indicates that he has known the applicant since 1986 and that he became acquainted with the applicant at the applicant's address in 1986. The AAO finds that the record does not include proof that the affiant was in the United States during the requisite time period, and does not provide any details of the events and circumstances regarding the affiant's acquaintance with the applicant. Moreover, the affidavit does not establish the applicant's entry into the United States prior to January 1, 1982 and continuous presence in the United States for the requisite time periods. The AAO does not find this affidavit probative as it does not establish the applicant's entry into the United States and presence in the United States for the requisite time period, as well as not providing

credible detail regarding the events and circumstances surrounding the affiant's knowledge of the applicant.

In response to the director's NOID, the applicant provided an August 29, 2005 affidavit from [REDACTED]. [REDACTED] indicates that he is a citizen of the United States; that he has known the applicant since they were friends in Senegal; and that he knows the applicant has been in New York since 1981, although he only met him in New York in 1985. The AAO notes that the record does not include proof that the affiant was in the United States during the requisite time period and does not provide the necessary detail to establish how the affiant knew the applicant was in New York in 1981 although he did not meet him in New York until 1985. The AAO does not find this affidavit probative as it does not contain details of the circumstances and events establishing the affiant's knowledge and acquaintance with the applicant.

The three affidavits described above and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required 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.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 three generic affidavits that do not include corroborating evidence, 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 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.