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U.S. Citizenship  
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Services

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FILE:



Office: NEW YORK

Date:

**- MAY 01 2008**

MSC 04 358 10560

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. 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.

*for Michael T. Kelly*  
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, Fairfax, Virginia. 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 22, 2004.

On October 17, 2005, Citizenship and Immigration Services (CIS) interviewed the applicant. Under oath, the applicant swore: that his date of birth is December 31, 1958; that he attended school in Senegal from age 10 or 11 until age 22 or 23 when he finished technical school; that he worked as a mechanic in Senegal for about five or six years for one company and an additional year for another company; and illegally entered the United States between the age of 25 and 27. The applicant's I-687 indicates the applicant illegally entered the United States before January 1, 1982.

On November 10, 2005, the director issued a Notice of Intent to Deny (NOID) the application. The director noted that the applicant's sworn statements were inconsistent with the applicant's indication that he entered the United States prior to January 1, 1982. The director specifically observed that the applicant's date of birth and the applicant's statement that he entered the United States between the age of 25 and 27 would correspond to an entry date into the United States no earlier than December 31, 1983. The director noted further that the applicant had not provided any documentation in support of his claim of residency.

On January 27, 2006, the director denied the application, finding that the applicant had failed to submit additional evidence for consideration within the allotted time period.

On February 28, 2006, the applicant submitted an appeal and a copy of a delivery confirmation notice showing a delivery to CIS on November 30, 2005. The applicant asserts that he submitted an affidavit from the former manager of the Park View Hotel where he resided in 1981, on November 30, 2005 in response to the director's NOID. The record also contains a copy of a November 18, 2005 affidavit from [REDACTED] general manager of the Parkview Hotel. The affiant states that he has known the applicant since 1981 and vouches for the applicant's residence and continuous physical presence in the United States from 1981 to 1991.

The applicant also submits on appeal: (1) a revised affidavit from [REDACTED], dated February 23, 2006, indicating that the applicant had been the affiant's tenant from 1981 to 1985 in apartment number 1D5 and that the affiant could vouch for the applicant's physical presence in the United States from 1981 to 1985; (2) a February 24, 2006 affidavit from [REDACTED] indicating that the applicant had been his mechanic for more than a decade and listing the applicant's United States residences from 1981 to 1985, from 1994 to 1996, from 1996 to 1999, and from 1999 to present; (3) a February 24, 2006 affidavit from [REDACTED] indicating he had known the applicant since 1981 and that he and the applicant had lived together for about three years and

have known each other about 25 years; (4) a second affidavit from [REDACTED] dated July 6, 2005 listing the applicant's United States residences from 1981 to 1985, from 1991 to 1994, from 1996 to 1999, and from 1999 to present and indicating that he had met the applicant at the mosque and they had become friends; and (5) a July 6, 2005 affidavit from [REDACTED] listing the applicant's United States residences from 1981 to 1985, from 1994 to 1996, from 1996 to 1999, and from 1999 to present and stating that he had known the applicant as a friend after meeting each other precisely in 1981.

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; 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.

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 filing or 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 the petition was filed. The applicant has submitted six affidavits from four different individuals. However, the affiants do not provide telephone numbers, do not provide adequate identification, do not provide evidence that the affiants were in the United States during the applicable time period, and do not provide detail regarding the circumstances and events regarding their relationships with the applicant. In addition, the affidavits do not identify the applicant's United States residence, if any, from 1985 to 1991. Moreover, the affiants do not provide detail of the events and circumstances surrounding their meeting with the applicant and their subsequent interaction with the applicant. These form affidavits comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 and through the requisite time period. The record lacks documents that, alone or in combination, provide adequate corroboration of the applicant's claim of entry and residence in the United States for the required time period.

Moreover, as the director noted, the applicant's own sworn testimony is inconsistent. The applicant states that he was born December 31, 1958 and indicates that he was not in the United States until he was 25 or 27 after leaving school at age 22 or 23 and working six to seven years in Senegal. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant does not provide further statements clarifying this apparent inconsistency.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period coupled with the applicant's apparent inconsistent statements 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 form, generic, and incomplete affidavits that lack sufficiently concrete details to corroborate the applicant's claim of continuous presence during the requisite periods, 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 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.