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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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FILE:

MSC-04-302-10640

Office: NEW YORK

**MAY 02 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. 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.

*160 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, 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 July 28, 2004 (together, 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, specifically noting that “the information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” In addition, the director noted that there were “several discrepancies found in [the applicant’s] file which cast doubt upon the credibility of [the applicant’s] claims.” The director denied the application as 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.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A indicating that his brief or statement was attached. The applicant did not submit any additional evidence along with the Form I-694, but stated on the Form I-694 that the mistakes on his application were because of a “misunderstanding.” As of this date, the AAO has not received a brief or any additional evidence from the applicant. Therefore, the record is complete.

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).

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 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 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. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 28, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED], Bronx, New York, from March 1981 to December 1989. At part #33, he listed his first employment in the United States as a street vendor in downtown Manhattan, New York, from May 1981 to December 1989. At part #32, the applicant listed one absence from the United States since entry. According to the Form I-687, the applicant visited Senegal from December 1989 to December 2000.<sup>1</sup> At part #31, the applicant listed an affiliation with the Senegalese Association in America from April 2004 to the present.

The applicant has provided two notarized statements; copies of two envelopes without postmark stamps; an envelope addressed to the applicant postmarked 2003; a copy of a bank statement for statement period January 1, 2004 to January 31, 2004; a visitor's visa; a copy of a Form I-94 card with an entry date of June 15, 2001; a copy of a New York driver's license issued on July 20, 2005; and a letter from the applicant dated May 2, 2006. Some of the evidence submitted indicates that the applicant resided in the United States after his entry on July 20, 2005 with a visitor's visa and is not probative of residence before that date. The following evidence relates to the requisite period:

- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated December 31, 2005. The declarant states that he lives in Glendale, New York and that he first met the applicant on August 22, 1987 on [REDACTED] and Broadway. The year listed on the form-letter looks like "1987," however, it could also read as "1981." The declarant states that he met the applicant while "buying a birthday present for a friend." The declarant adds that "since 1981 we have developed a close relationship as friends. We have gone out on several occasions with other friends." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized statement from [REDACTED] dated April 20, 2006. In his statement, Mr. Horton states that he lives at [REDACTED] New York, New York. He states that he has known the applicant since 1981 and that he knows the applicant "from [REDACTED] and [REDACTED] selling hats [and] scarves." Although the declarant states that he has

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<sup>1</sup> The director's April 6, 2006 notice of intent to deny (NOID) states that during the applicant's March 21, 2006 interview, the applicant stated that he traveled to Canada in December 1987 for two weeks. The director noted the discrepancy between the applicant's Form I-687 and the applicant's statements during the interview.

known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. In addition, according to the Form I-687, the applicant worked as a street vendor on Broadway and 34<sup>th</sup> Street and not on “28<sup>th</sup> and Broadway.” Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The record indicates that the applicant entered the United States with a valid visa on July 20, 2005, but the evidence submitted does not establish that he resided in the United States before that date.

In addition, the record of proceeding contains several documents in French without English translations. Because the applicant failed to submit a certified translation of the documents to apprise the AAO of their content in English, the AAO accords no weight to these documents. *See* 8 C.F.R. § 103.2(b)(3) regarding an applicant's responsibility to provide a certified translation of a document in a foreign language. Further, the authenticity and origin of the documents are not established. Accordingly, these documents are not probative.

The remaining evidence in the record is comprised of the applicant's statements, in which he claims to have entered the United States in March 1981 through the Canadian border and to have resided for the duration of the requisite period in New York. 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 are not supported by any credible evidence in the record; the record indicates that the applicant entered the United States with a valid visa on July 20, 2005, but the evidence submitted does not merit a conclusion that he resided in the United States before that date.

The director issued a notice of intent to deny (NOID) on November 16, 2005 and on April 6, 2006. The director denied the application for temporary residence on August 1, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. In addition, the director noted that there were “several discrepancies found in [the applicant's] file which cast doubt upon the credibility of [the applicant's] claims.” Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant stated on the Form I-694 that the discrepancies in his application were due to a “misunderstanding.” The applicant did not submit any additional evidence in support of

the applicant's claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 lack of credible supporting documentation, it is concluded that 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.