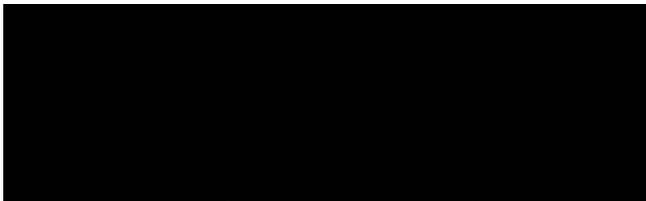




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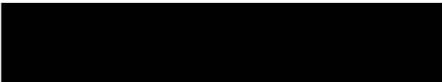


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FILE:   
MSC-05-007-10670

Office: NEW YORK

Date: **MAY 08 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.

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.

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the applicant has failed to meet this burden.

An examination of the record reveals that 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 October 7, 2004.

In support of the application, the record contains one signed and notarized statement by [REDACTED] [REDACTED], dated October 2, 2004. The affiant certifies that he has known the applicant since 1981. While not required, the statement is not accompanied by any evidence that the affiant resided in the United States during the requisite period and it lacks any details of his relationship with the applicant. The affiant failed to indicate how he dated his acquaintance with the applicant and the frequency of their contact. Given its lack of detail and relevance, the statement is neither probative nor credible.

The record also contains an affidavit, signed by the applicant, which states that he left the United States in December 1986 and returned in June 1987.

On August 29, 2005 the director issued a Notice of Intent to Deny (NOID). 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 applicant was given thirty (30) days to submit additional evidence supporting his eligibility for the benefit sought. The applicant failed to submit any additional evidence within the time allotted and thus, the director denied the application stating 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's decision noted that the applicant was interviewed on June 1, 2005 in connection with the legalization application. During the interview, the applicant confirmed what was stated in the affidavit, that is, that the applicant left the United States on December 15, 1986 and returned in June 1987. The director concluded that the absence represents a clear break in residency as it is far in excess of a single absence of 45 days during the statutory period from January 1, 1982 until May 4, 1988.

On appeal, the applicant asserts that he left the United States in December 1986 and returned in January 1987 not June 1987. He provides no evidence supporting his claim that he re-entered the United States in January 1987, nor does he explain the inconsistency between the dates of his absence that he listed on appeal, and those that are listed on his legalization application and confirmed during his interview. He does, however, submit additional evidence supporting his claims of continuous residency.

The additional evidence submitted consists of two photocopies of purported envelopes. Both envelopes were mailed from Senegal, bore Senegal postage stamps, and were addressed to the applicant at the address that he claimed to have resided in the United States during the requisite period. [REDACTED], Bronx, New York). The dates of the postal stamps, however, appear to have been altered from 1991 to 1981. These documents are thus void of any probative value and cast doubt on the truthfulness of the claims and evidence submitted.

The one affidavit, the applicant's own statements and the two envelopes, comprise the only documentation provided by the applicant as evidence of his residence in the United States for the requisite period. This evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States for the requisite period. The record lacks any documentation 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 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, the inconsistencies noted herein, and the applicant's reliance upon documents with little or no probative value, 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.