



U.S. Citizenship  
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Services

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[Redacted]

FILE:

MSC 05 285 14103

Office: NEWARK

Date: MAY 08 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Newark, and 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. 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, the director noted inconsistencies in the applicant's statements and concluded that the validity of the applicant's claim is thereby undermined. Accordingly, the director denied the application, finding 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. Although the director denied the application, in part, based on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

On appeal, counsel for the applicant reasserts the applicant's claim and provides additional documentation in support thereof.

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 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 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 alien 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 period, 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 petitioner 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, 431 (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 resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden. The record shows that the applicant failed to provide evidence in support of his Form I-687 application for temporary resident status. Accordingly, in a decision dated June 14, 2006 the director denied the application. The director reviewed portions of the testimony and documentation provided by the applicant at an interview with a Citizenship and Immigration Services' officer, noting various anomalies that contradict the basis for eligibility. Specifically, the director discussed the applicant's failure to provide school records to support the claim that he attended Lycee Kennedy Private School in New York from 1975 to 1984. The director also noted that the applicant claimed to have resided in the United States continuously from 1975 to 1992, a statement that the director found contradictory to the applicant's professional résumé, which states that the applicant attended Lycee Technique High School in Bamako, Mali from October 1988 to July 1992.<sup>1</sup> It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel explains that the reason for the applicant's inability to produce records of his alleged attendance of Lycee Kennedy Private School in the United States is that the school does not keep student records that predate 1988. In support of the applicant's claim, counsel points to an affidavit from the

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<sup>1</sup> It is noted that the record contains an ETA 750 application for employment certification, which the director references as the applicant's résumé. The only history of the applicant's education and employment is contained in the ETA 750.

applicant's mother. However, her affidavit, which is dated June 26, 2006, only states that she, her husband, and the applicant all lived in New York in 1972 and that during such time the applicant attended the Lyceum Kennedy French School. The applicant's mother made no claim that the applicant continued to attend this school in the United States after she and her husband returned to Mali. Moreover, even if the affiant made such a claim, her statements would have been insufficient to overcome the inconsistency discussed above. Counsel has provided no documentation from a representative of the school to corroborate his explanation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, counsel refers to two other affidavits that have been submitted on appeal in support of the applicant's claim. Specifically, the affidavit from Jawan Olajuwon, dated August 8, 2006, states that the affiant has known the applicant since 1981 when the applicant came to visit relatives in Ohio where the affiant resided at the time. Although the affiant claimed to have remained close friends with the applicant since then, no details were provided about the applicant's purported residence in the United States during the statutory period. In fact, the affiant only claimed to have seen the applicant frequently when he/she attended school in Ohio in 1994 with the applicant. There is no information as to the frequency of his/her encounters with the applicant during the relevant time period. Based on these deficiencies, this affidavit will be accorded minimal weight as evidence of the applicant's residence in the United States during that time.

The other affidavit, dated July 28, 2006, is from [REDACTED], who claimed to have known the applicant since 1973 when he was residing in New York with his parents. Although the affiant claimed that he has kept in touch with the applicant since such time, he only stated that he was "fairly certain" that the applicant resided in the United States "most of the time" since the two met in 1973. The affiant did not specifically state that he had personal knowledge of the applicant's whereabouts during the relevant time, nor did he claim to have had any contact with the applicant during such time. As such, this affidavit also has minimal probative value in establishing the applicant's residence in the United States during the statutory period.

Additionally, the applicant's education history as provided in the Form ETA 750, Application for Alien Employment Certification, shows that the applicant attended Ottawa University in Ottawa, Canada from September 1992 to June 1993. However, the applicant's only claimed absence from the United States, as listed in No. 32 of Form I-687, is from July to August of 1995.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two people whose statements the AAO has found to be deficient and lacking in probative value, as neither of the affidavits from the applicant's friends properly addresses the issue of the applicant's residence and the affidavit of the applicant's mother contains no relevant information pertaining to the statutory time period at all. As discussed above, there are also considerable inconsistencies the dates of the applicant's absences from the United States and the educational institutions he attended in the past.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has 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-*, 20 I&N Dec. 77. 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.