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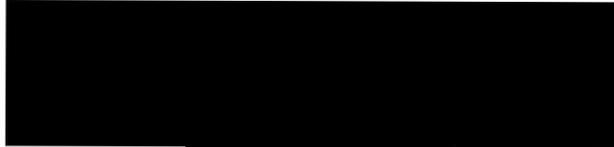
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-130-10171

Office: NEW YORK

Date: **MAY 15 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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a faint background.

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. 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 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.

On appeal, the applicant asserts his claim of eligibility for temporary resident status and attempts to explain the inconsistencies found in his statements.

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).

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) 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. See 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.* at 80. 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 7, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he met the applicant on 42nd Street in New York where he worked as a vendor. He also listed the applicant's addresses from December of 1981 to May of 1988. Here, the affiant has failed to specify the frequency with which he saw the applicant during the requisite period. Although not required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he met the applicant at his girlfriend's party. He also listed the applicant's addresses from December of 1981 to May of 1988. Here, the affiant has failed to specify the frequency with which he saw the applicant during the requisite period. Although not

required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] of the Masjid Malcom Shabazz temple in which he stated that the applicant has been a member since December of 1981, and that he attends prayer services on Fridays and on other days. This letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during the membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from a [REDACTED] manager in which he stated that the applicant resided at the hotel located at [REDACTED] in New York from December of 1981 to July of 1984. Here, the declarant failed to indicate the basis of this information. There is nothing to show the frequency in which the declarant saw the applicant during the requisite period.
- A letter from the manager of a [REDACTED] in which he stated that the applicant resided at the Hotel located at [REDACTED] in New York from July of 1984 to May of 1988. Here, the declarant failed to indicated the basis of this information. There is nothing to show the frequency in which the declarant saw the applicant during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant is a vendor who came to his restaurant on Broadway to eat along with his co-workers. Here, the declarant fails to specify the name and address of his restaurant. He has failed to specify the frequency with which he saw the applicant during the requisite period. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] the manager of [REDACTED] Trading Co., Inc. in which he stated that the applicant has been his regular customer since 1981. Because the attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] e in which he stated that he has known the applicant since 1981 and that the applicant often came by his place of employment to visit with his friends. The affiant also stated that over the years they have become good friends. Here, the affiant fails to specify his place of employment or the frequency in which the applicant visited the

sight. Although not required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant stated under penalty of perjury during his interview with immigration officers on June 1, 2005 that he entered the United States in June of 1981, returned to the Gambia in July of August of 1981, and returned to the United States on January 25, 1982 with a B1/B2 visitor's visa. On the applicant's Form I-687 application at part #32, the applicant indicated that his only absence from the United States was in June of 1988. In response to the director's Notice of Intent to Deny (NOID) dated August 19, 2005, the applicant stated that there was a misunderstanding on his part of the questions he responded to during his interview due to his limited understanding of the English language. He also stated that the information contained on his Form I-687 application and in the evidence he submitted is sufficient to establish his eligibility for temporary resident status.

In denying the application the director noted that contrary to the applicant's claims, he never expressed any confusion during the immigration interview, that he never requested the assistance of an interpreter, and that he refused such assistance when offered. The director noted that the applicant had failed to establish that he was continuously present in the United States in an unlawful status since prior to January 1, 1982.

On appeal, the applicant attempts to explain the conflict in statements. He asserts that the director should have taken into consideration his limited understanding of the English language that caused him to make inaccurate statements during his interview with immigration officers. He further asserts that it is clear from his Form I-687 application and the evidence submitted in support thereof, that he qualifies for temporary resident status.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. Although the applicant asserts that he was not fully aware of the contents of his sworn statements made before immigration officers during his interview due to his limited understanding of the English language, he has failed to submit independent documentary evidence to substantiate such claim. The applicant claims that the attestations he submitted as evidence are sufficient to establish his eligibility for temporary resident status however, upon review the applicant has failed to demonstrate that the information contained in the attestations are based upon the declarants' firsthand knowledge of his whereabouts and circumstances in the United States. Furthermore, the attestations are lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite 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 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 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 for the requisite period 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.