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U.S. Citizenship  
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FILE:

MSC-05-188-10030

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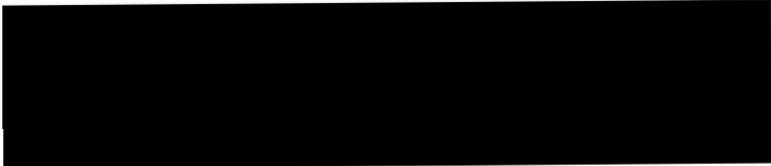
Applicant:



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:



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 be "John F. Grissom".

John F. Grissom, Acting 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, Dallas. 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and counsel for the applicant states that the director did not fully consider all of the evidence the applicant submitted in support of his application.

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. 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, and the

sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. 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.

Section 245A(b)(1)(C) of the Immigration and Nationality Act (Act) provides that an applicant “*must establish* that he is (i) is admissible . . . and (2) *has not been convicted* of any felony or 3 or more misdemeanors.”

On June 11, 2003, the Waxahachie Texas Police Department arrested the applicant on one count of *Counterfeiting Trademarks*, a felony. On March 5, 2004, the Ellis County, Texas District Court dismissed the charges against the applicant. Case No. [REDACTED]. Because the charges against the applicant were dismissed, he has not been convicted of a felony offense and he is therefore not ineligible for adjustment to temporary resident status pursuant to Section 245A(b)(1)(C) of the Act.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

In his sworn statement taken at the time of his interview regarding his Form I-687 application, the applicant stated that the first time he entered the United States was in 1982. This statement indicates that the applicant failed to first enter the United States prior to January 1, 1982.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of statements from friends and acquaintances; letters from the managers of the Hotel Bryant and the Hotel Mansfield Hall; and a letter from [REDACTED] of the Masjid Malcolm Shabazz Mosque. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains statements from [REDACTED]s and [REDACTED], all of whom state that they have known the applicant since a point of time during the requisite period. Although affiant [REDACTED] states that she has known the applicant since 1981, she does not state where she first met the applicant, nor does she state whether she knows if he resided in the United States for part of all of the requisite period. Similarly, though [REDACTED] states that he has known the applicant since 1985, he does not indicate whether he first met the applicant in the United States or elsewhere and he is silent regarding whether he knows if the applicant ever resided in the United States during the requisite period. Though [REDACTED] and [REDACTED] state that they first met the applicant when he was selling goods on 43<sup>rd</sup> street in 1981, and at a dance in the Savoy Manor in 1981 respectively, neither affiant states whether they know if the applicant resided in the United States during the requisite period. Both individually and collectively, the statements do not supply enough details to lend credibility to their claimed relationships with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The applicant also submitted letters from the managers of the Hotel Bryant and the Hotel Mansfield Hall. The letter from the Hotel Bryant is signed by its manager, whose name is not legible, and the letter from the Hotel Mansfield Hall is signed by [REDACTED], who indicates that he is the manager of that hotel. The manager of the Bryant Hotel states that the applicant resided on [REDACTED] in New York in the Hotel Bryant from October 1981 until April 1984. The Manager of the Hotel Mansfield Hall states that the applicant resided at that hotel from April 1984 until August 1987. This hotel is located at [REDACTED] in New York.

However, at part #30, of the applicant's Form I-687 he indicated that he resided at "[REDACTED] in New York from 1981 until an unspecified year in the 1980's. He also stated that he then resided at [REDACTED] in New York beginning in 1988. Neither of the addresses on the applicant's Form I-687 corresponds with an address associated with either of these hotels.

Further, in his affidavit dated October 18, 2007, the applicant stated that he did not know anyone when he arrived in the United States in 1981 and that he resided with African people from Senegal from 1981 to 1985 and then stated that after his brother [REDACTED] entered the United States in 1985, they began to reside together at [REDACTED] in the Bronx, New York until 1989. This address is not consistent with the addresses he indicated he resided at during the requisite period on his Form I-687 or with the addresses of either of these hotels.

This evidence provides significantly contradictory information regarding the applicant's addresses of residence during the requisite period, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The evidence regarding his addresses of residence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains a letter from the Masjid Malcolm Shabazz signed by [REDACTED], who states that her or his title is "Public Information." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This letter does not comply with the above cited regulation because it does not: state the address where the applicant resided during her membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, this letter is not deemed probative and is of little evidentiary value.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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