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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

MSC-06-264-26095

Office: SAN FRANCISCO

Date: NOV 25 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. 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 "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 Director, San Francisco. 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining 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 noted that the affidavits and other evidence submitted by the applicant were lacking in detail and were not credible. The director further noted that the applicant submitted an asylum application that was denied on January 29, 2003. The director noted that although the applicant claimed during his interview with an immigration officer that he filed an I-687 Application sometime in the year 2000, he was unable to remember the filing fee, the address in Maryland where he filed, or the reason given for the denial of his application. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he entered the United States in October of 1981, that he lived at [REDACTED] in Bronx, New York until September of 1993, and that he worked as a vendor and day laborer during the requisite period. The applicant submits a declaration from [REDACTED] on appeal.

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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 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 November 4, 2005.

The director determined that the applicant had submitted affidavits and evidence that were lacking in detail and that were not credible.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status.

As evidence on appeal, the applicant submitted a declaration from [REDACTED], who he states that he has known the applicant since 1981 when they lived together at [REDACTED] in Bronx, New York. He further states that he and the applicant were vendors working for Mr. [REDACTED] and were also day laborers. He also states that the applicant left the New York area in 1993. Here, the declaration is inconsistent with the applicant's testimony given under oath before Judge [REDACTED] on January 29, 2003 during the applicant's asylum hearing at the United States Immigration Court located in Baltimore, Maryland. During his hearing, the applicant testified that he resided in Cameroon until April of 2002 when he fled his country as a result of a death threat. Because this declaration is inconsistent with statements made by the applicant, it is not afforded any weight in establishing the applicant's presence in the United States throughout the requisite period.

In addition, the AAO notes that statements made by the applicant in relation to his asylum application are inconsistent with information he provided on his Form I-687 Application concerning his employment and continuous residence in the United States during the requisite period. For example, the applicant testified under oath during his asylum hearing before Judge [REDACTED] that he was educated in Cameroon and was a high school teacher for the government of Cameroon from September of 1997 to April 8, 2002. He also testified that he had to flee his native country as a result of having received death threats as a member of the Cameroon Teachers' Trade Union, and that he had never been to the United States before arriving in April 8, 2002. The applicant testified that he received a medical certificate from [REDACTED] in Cameroon on May 9, 2001 after being treated for a gun shot wound inflicted upon him while he was in Cameroon, and he provided a copy of the certificate as evidence of such. On his Form I-589, Application for Asylum and for Withholding of Removal, at part A.III(3) and in a declaration submitted in support of his application, the applicant stated that he attended the Sacred Heart College Secondary School in Bamenda, Cameroon from September of 1978 to June of 1983, CCAST High School in Bambili, Cameroon from September of 1983 to June of 1985, Yaounde University located in Yaounde, Cameroon from September of 1985 to June of 1990, and ENS Yaounde teacher's training school located in Yaounde, Cameroon from September of 1992 to November of 1994. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by

independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).<sup>1</sup>

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since throughout the requisite period. He has failed to overcome the issues raised by the director. There is nothing in the record of proceeding to demonstrate the authenticity of the declarations submitted on appeal.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 reliance upon documents that are not credible and are lacking in 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.

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<sup>1</sup> The AAO notes that the applicant made representations on his Form I-687 Application in an attempt to establish his residence within the United States for the requisite period that are materially different from his testimony before the Immigration Judge. Consequently, the applicant may be ineligible to adjust to temporary residence under section 245A of the Act on this basis as well. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).