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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-04-363-11296

Office: NEW YORK

Date: **OCT 03 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.

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 that the affidavits he furnished are credible and amenable to verification. The applicant states that he provided credible testimony of his residence in the United States from 1981 until 1988. The applicant states that he had an absence from the United States from September 1986 until November 1988 that was due to an emergent reason beyond his control. The applicant states that he arrived in The Gambia in September 1986 and was immediately hospitalized for high blood pressure and then his father died. The applicant states that he has furnished evidence of his hospitalization and the death of his father.

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 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 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 September 27, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from 1981 until 1988. At part #32 of the application, the applicant showed that he was absent from the United States from September 1986 until November 1988. At part #33, the applicant showed his first employment in the United States to be as a self employed peddler in New York, New York from 1981 until 1988.

The applicant submitted the following documentation:

- Identical letters from [REDACTED] and [REDACTED] [REDACTED], respectively dated June 1, 2005. The letters state that they know the applicant has been living in the United States since late 1981. The letters further state that they met the applicant around that time while he was street peddling in New York. These letters contain general statements regarding how the authors first became acquainted with the applicant. The letters fail to illustrate the relationship the authors maintained with the applicant in the United States during the requisite period. Furthermore, the letters do not bear the signatures of their purported authors. Given these deficiencies, these letters are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from a clinician at the [REDACTED] located in Serrekunda, The Gambia. The letter states that the applicant was treated for high blood pressure at this clinic in October 1986. It further states that the applicant's return to the United States was delayed because of the treatment he received and the passing away of his father in November 1986. The letter indicates that the applicant returned to the United States in November 1988. However, this letter fails to explain the reason his treatment for high blood pressure caused a two year delay in his return to the United States.

The record shows that the applicant also filed a Form I-485, Application to Adjust Status, under Section 1104 of the Legal Immigration Family Equity (LIFE) Act. The applicant concurrently filed with this application, a Form G-325A, Biographic Information Sheet. The applicant showed on this form that he resided in The Gambia from July 1981 until November 1988. The applicant further indicated that he was married in The Gambia on December 20, 1985. This information is inconsistent with the applicant's claim of residence in the United States during the requisite period. The inconsistency seriously undermines the applicant's credibility as well as his claim of residence in the United States during the requisite period.

The applicant furnished with his Form I-485, affidavits from [REDACTED] and [REDACTED] respectively dated October 2002. The affidavits state that the affiants have known the applicant since 1988. However, the affidavits fail to indicate whether the affiants first met the applicant in the United States or abroad. Furthermore, they do not specify the month in 1988 that the affiants first became acquainted with the applicant. Hence, it is unclear whether they met him during the requisite period. Finally, the affidavits from [REDACTED] and [REDACTED] are inconsistent with their letters, respectively dated June 1, 2005. Their letters indicate that they first met the applicant in late 1981. Given these discrepancies, these affidavits are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On July 18, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director stated that during the applicant's interview he testified that he departed the United States

¹ The applicant furnished two identical letters from [REDACTED]

to travel to The Gambia in September 1986 and returned to the United States in November 1988. The director determined that this absence represents a break in residency in excess of a single absence of 45 days. The director found that the affidavits (statements) do not overcome this break in continuous residence and physical presence. The director noted that these statements appear to have been written by the same person. The director determined that the applicant offered no evidence that his return to the United States could not be accomplished during the requisite period due to emergent reasons. The director afforded the applicant 30 days to submit additional evidence in rebuttal to the NOID.

On February 1, 2006, the director issued a notice to deny the application. In denying the application the director determined that the applicant failed to submit additional documentation in response to the NOID. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that the affidavits he furnished are credible and amenable to verification. The applicant states that he provided credible testimony of his residence in the United States from 1981 until 1988. The applicant states that he had an absence from the United States from September 1986 until November 1988 that was due to an emergent reason beyond his control. The applicant states that he arrived in The Gambia in September 1986 and was immediately hospitalized for high blood pressure and then his father died. The applicant states that he has furnished evidence of his hospitalization and the death of his father.

The applicant furnished a certificate of death from a clinician with the Jamano Clinic located in Serrekunda, The Gambia. The death certificate states that the applicant's father, [REDACTED], died on November 17, 1986 from "CVA" and hypertension.

According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation.

The applicant showed on his Form I-687 that he was absent from the United States from September 1986 until November 1988. The applicant corroborated this absence during his interview for temporary resident status. Pursuant to 8 C.F.R. § 245a.2(h)(1), if the applicant's absence exceeds 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-*, defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant indicated that after he arrived in The Gambia in September 1986 he was immediately hospitalized for high blood

pressure and then his father died. The applicant submitted as corroborating evidence, documentation from the Jamano Clinic located in Serrekunda, The Gambia. The applicant furnished a letter from the Jamano Clinic, which states that he was treated at the clinic for high blood pressure in October 1986. The applicant also furnished a death certificate from the Jamano Clinic, which states that his father died from CVA and hypertension on November 17, 1986. The applicant's illness and his father's death certainly are emergent reasons to warrant a delay in his return to the United States. However, the applicant testified that he returned to the United States in November 1988, two years after the occurrence of these events. The applicant has failed to provide any evidence that he could not return to the United States within a reasonable time period after his medical treatment and the death of his father. Without such evidence, it cannot be concluded that an emergent reason "which came suddenly into being" delayed his return to the United States for two years. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

Furthermore, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the entire requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, five identical letters. However, these letters are unsigned and fail to establish the authors' relationship with the applicant in the United States during the requisite period. Furthermore, the applicant's record shows that he previously submitted a Form I-485 application pursuant to the LIFE Act. The applicant furnished with this application as corroborating evidence, six affidavits. However, these affidavits do not establish that the affiants met the applicant during the requisite period and are inconsistent with the aforementioned letters. As such, the applicant's evidentiary documentation is without any probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding. Thus, the applicant is ineligible for temporary resident status for this additional reason.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.