

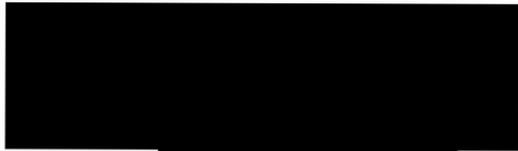
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-186-11958

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 addresses the basis for the denial of his application. The applicant furnishes additional documentary evidence.

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 April 4, 2005. 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 New York, New York from December 1981 until January 1990. At part #33, he showed his first employment in the United States to be as a self-employed vendor in New York, New York from May 1982 until May 1989.

On February 13, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director found that the applicant did not submit any documentary evidence of his residence in the United States during the requisite period. The director noted that the applicant indicated on his Form I-687 that he had one absence from the United States from June 1992 until July 1992; however his marriage certificate indicates that he was married in Senegal on April 15, 1993. The director determined that the applicant failed to submit credible documents that constitute by a preponderance of the evidence his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

It should be noted that at issue in proceeding is the applicant's residence in the United States during the requisite period. The applicant 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). According to 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. Therefore, the inconsistency regarding the applicant's absence from the United States in April 1993 is not relevant to this proceeding. However, it does undermine the applicant's overall credibility.

On May 5, 2006, the director issued a Notice of Decision to deny the application. The director determined that the applicant failed to submit additional evidence 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 states that he entered the United States in 1981 and resided at the Parkview Hotel located at [REDACTED]. The applicant states that he has enclosed an affidavit from [REDACTED], manager, Parkview Hotel. The applicant states that his marriage was officially recorded in 1993. He indicates that his marriage was celebrated in January 1976. The applicant states that he has enclosed the birth certificates of his children and his marriage certificate. The applicant states that he has enclosed an affidavit from [REDACTED], a retired police officer. The applicant asserts that he has a prima facie case and his application should be favorably adjudicated.

The applicant submitted the following documentation:

- A notarized letter from [REDACTED], General Manager, Parkview Hotel. This affidavit indicates that the Parkview Hotel is located at [REDACTED], New York, New York 10026. The affidavit provides that [REDACTED] has known the applicant since 1981. The affidavit states that the applicant was his tenant at apartment [REDACTED] from December 1981 until January 1990. This affidavit is dated March 2, 2006, over 24 years after the date that the applicant purportedly began residing at the Parkview Hotel. This affidavit fails to establish how [REDACTED] dated the applicant's residence at this hotel. It is unclear whether [REDACTED] relied on his own recollection, the applicant's recollection, or hotel records. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from retired police officer [REDACTED] dated October 14, 2005. This letter states that he has known the applicant since 1981. The letter fails to explain how and where [REDACTED] first became acquainted with the applicant. It does not indicate whether they first became acquainted in the United States or abroad. In addition, the letter fails to explain the frequency of their contact in the United States during the requisite period. Given these

deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

A Senegalese Marriage Certificate and Senegalese Birth Certificates with certified English translations. The marriage certificate indicates that the applicant and his wife had a marriage in Senegal according to the Islamic Customs on January 1, 1976. The birth certificates show the birth place for the applicant's children as Senegal. The certificates indicate their dates of birth as March 21, 1979, December 15, 1980, September 28, 1976 and January 2, 1974. Since these documents do not relate to the requisite period, they are not relevant to this proceeding.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he provided sufficient evidence to establish that he has resided in the United States during the 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, a notarized letter from [REDACTED] and an affidavit from [REDACTED]. Both of these statements are without any probative value because of their lack of detail. The letter from [REDACTED] fails to establish how he dated the applicant's residence at the Parkview Hotel. The affidavit from [REDACTED] fails to provide any information on their relationship in the United States during the requisite period. 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

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.