

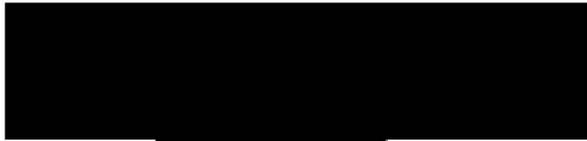


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-031-10037

Office: WASHINGTON

Date: SEP 26 2008

IN RE: Applicant: [REDACTED]

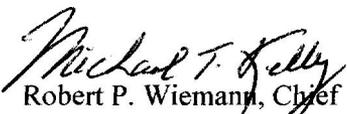
PETITION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

for 
Robert P. Wieman, 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, Washington. 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, together comprising the I-687 Application. 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. Specifically, the director found that the applicant had not provided sufficient evidence and that the evidence “did not cover the entire statutory time 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and indicated that his brief or statement was attached. The applicant submitted a second affidavit from [REDACTED] dated September 18, 2006, but there is no brief or statement from the applicant in the record of proceeding. On the Form I-694, the applicant stated that the affidavit submitted “establishes that [he] entered the U.S.A. in 1981.” The applicant also stated that he has maintained continuous residence in the United States until 1988 “when [he] went back to Senegal for a visit.” On June 30, 2008, the AAO issued a notice of intent to find fraud providing the applicant with 15 days to respond. On July 24, 2008, the AAO received a letter from the applicant requesting 30 additional days in which to respond. As of this date, the AAO has not received a response or any additional evidence from the applicant. Therefore, the record is complete.

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)(1).

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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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.

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 (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 establish continuous unlawful residence in the United States for the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted his I-687 Application to U.S. Citizenship and Immigration Services (CIS) on October 31, 2004. The director determined that the applicant had failed to submit sufficient credible evidence to establish that he had continuously resided in the United States for the requisite period and, accordingly, denied the application on September 5, 2006.

Prior to issuing the notice of denial, the director issued a notice of intent to deny the application (NOID) on September 1, 2005, finding that the applicant had failed to submit credible evidence in support of his claimed residence in the United States since prior to January 1, 1982 because he did not submit any evidence with his application and stated during his August 16, 2005 interview that he had no evidence in his possession at the time. The applicant was granted thirty days to respond to the NOID and submit additional evidence in support of his claim.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 31, 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 listed his first address in the United States as [REDACTED] New York, from January 1981 to February 1988. At part #33, he listed his first employment in the United States as a market vendor in Richmond, Virginia, from October 1991 to February 2002. At part #32, the applicant listed one absence from the United States. According to the Form I-687, the applicant visited Senegal from February 1988 to November 1995.¹ At part #31, the applicant included an affiliation with the African Islamic School in Bronx, New York from 1981 to 1987.

The applicant has provided two affidavits from the same individual; a physician's statement dated December 5, 1982; a copy of the applicant's Virginia driver's license issued on April 4, 2005; a copy of the applicant's passport; a copy of the applicant's visitor's visa issued on October 27, 1995 in Libreville; the applicant's Form I-94 card; and the applicant's birth certificate with English translation. The applicant's Virginia driver's license, birth certificate, and passport are evidence of the applicant's identity, but do not demonstrate that he entered before 1982 and resided in the United States for the requisite period. The applicant's Form I-94 card dated May 16, 2001 is evidence that the applicant entered the United States on November 8, 1995 with a visitor's visa, but it is not probative of residence before that date.

A review of the record of proceeding reveals that following contain inconsistencies and misrepresentations:

A form-letter "Affidavit of Witness" from [REDACTED] dated September 16, 2005. The affiant states that he lives in Richmond, Virginia and that he met the applicant in New York City, but does not remember the approximate date when he met the applicant. He states that he first met the applicant while they worked for a "temp. company doing different jobs." The affiant adds that he met the applicant "at one of the jobs where we [were] doing some yard work, cleaning up trash, and removing old tires." The affiant also states that he moved to Virginia where the affiant saw the applicant again working at Italian Gold. The affiant states that the affiant had "not seen [the applicant] in a few years" since moving "around 1986." Although the affiant states that he has known the applicant in the United States, he does not provide a date on which he first met the applicant or provide information regarding how frequently he had contact with the applicant. Furthermore, the affiant does not provide a date for when he first became reacquainted with the applicant in Virginia. Finally, the work mentioned by the affiant is not listed on the applicant's Form I-687. Doubt cast on any aspect of the applicant's proof may, of course, 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

¹ The Form I-687 originally stated that the applicant visited Senegal until October 1995. However, the original date has been crossed out in red ink and the date November 1995 has been written next to the original date.

objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An affidavit from [REDACTED] dated September 18, 2006. The affiant states that he lives in Richmond, Virginia and that he met the applicant in New York City as a “temp worker” during the summer of 1981. He states that he first met the applicant at a “job site where [he and the applicant] were assigned to remove some trash and old tires from a yard.” The affiant adds that he met the applicant “again in Richmond, Virginia at the Cloverleaf Mall at Italian Gold where he works as a jewelry repairer.” Although the affiant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a more than 25-year relationship with the applicant. The affiant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Also, the affiant does not provide a date for when he moved to Virginia or when he became reacquainted with the applicant in Virginia. This statement provides the “summer of 1981” as the time period during which the affiant met the applicant in New York City. However, the affiant’s previous statement, as mentioned above, states that the affiant does not remember when he met the applicant. Finally, the work mentioned by the affiant is not listed on the applicant’s Form I-687. Doubt cast on any aspect of the applicant's proof may, of course, 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, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A form-letter “physician’s statement” for the applicant dated December 5, 1982. The statement is required because the applicant applied for assignments through Access Nursing Services. The form is signed by [REDACTED] and lists an address in New York. The form also lists [REDACTED]’s medical license number as 118631. According to the New York State Education Department, [REDACTED] **has been licensed since 1965 and his medical license number is [REDACTED]**. In addition, in 1982 the applicant was 16 years old and there is no evidence in the record of proceeding that the applicant was qualified at that time to perform the duties of a nurse in the State of New York. Doubt cast on any aspect of the applicant's proof may, of course, 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, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this statement has no probative value in supporting the applicant's

² See <http://www.nysed.gov>.

claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- The Form I-130 filed by [REDACTED] on April 26, 2002 on your behalf indicates that you were married at Saint Louis, Senegal on April 20, 1994. However, the Form I-687 filed on October 31, 2004 indicates that you were “never married.” Doubt cast on any aspect of the applicant's proof may, of course, 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, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the reasons noted above, the documents submitted in support of the applicant’s claim have been found to lack credibility or to have minimal probative value as evidence of the applicant’s residence and presence in the United States for the requisite period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States in 1981 and to have resided for the duration of the requisite period in New York. The AAO notes that the record of proceeding only contains affidavits from one individual, [REDACTED], and as noted above, [REDACTED] affidavits lack sufficient detail to be found credible or probative. Finally, although the applicant listed an affiliation with the African Islamic School in Bronx, New York from 1981 to 1987, the applicant did not provide a transcript or other document confirming his enrollment. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

In summary, the affidavits provided by [REDACTED] contradict your employment information in the record of proceeding and contain insufficient detail to establish the affiant’s personal knowledge of your presence in the United States. The authenticity of the physician’s statement signed by [REDACTED] is highly suspect, given that it includes the wrong medical license number for Dr. [REDACTED]. The Form I-130 provides conflicting information about your marital status. These documents have seriously undermined your credibility as well as the credibility of your claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988)

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO issued a notice to the applicant on June 30, 2008, informing the applicant that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant of the relevant ground of inadmissibility under section 212(a)(6)(C) and that, as a result of his actions, his appeal would be dismissed, a finding of fraud would be entered into the record, and the matter would be referred to the U.S. Attorney for possible prosecution. See 8 C.F.R. § 245a.2(t)(4).

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. On July 24, 2008, the AAO received a hand-written letter from the applicant requesting 30 additional days so that he could "gather all documents necessary for a response." However, as of this date, the AAO has not received a response or any additional evidence from the applicant. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence. *Matter of Ho, supra*. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, as the record reflects that the applicant has submitted contradictory applications and made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact., a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.