U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: APR 22 2008

MSC 05 204 14245

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 appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, the applicant asserted that the evidence submitted sufficiently demonstrates his eligibility.

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 Immigration and Nationality Act (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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant signed the instant Form I-687 application on April 18, 2005 and submitted it on April 22, 2005.[1] On that application he stated that he lived at [redacted] Bronx, New York, from November 1981 to March 1990.

The record contains:

- the applicant's own affidavits, dated February 15, 2005 and April 19, 2005,
- affidavits dated February 15, 2005 and April 19, 2005 from [redacted][2]
- an affidavit dated November 18, 2005 from [redacted]
- an affidavit dated December 2, 2005 from [redacted], and
- photocopies of three airmail envelopes bearing the applicant's name and address and a postmark.

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[1] The applicant filed another Form I-687 application on February 18, 2005.

[2] On the latter affidavit, the affiant's first name is spelled '[redacted]

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In his February 15, 2005 affidavit the applicant stated that he first entered the United States during 1981. His April 19, 2005 affidavit contains the same information.

In his February 15, 2005 affidavit stated that he first met the applicant in the United States in 1987. The April 19, 2005 affidavit contains the same information.

In his November 18, 2005 affidavit [redacted] that he has known the applicant since 1985. He further stated that he lived with the applicant at [redacted] in New York City from April 1985 to June 1987.

This office notes that the information in [redacted]'s sworn affidavit conflicts with the applicant's assertion, made on the Form I-687 application, that from November 1981 to March 1990 he lived at [redacted], Bronx, New York.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In his December 2, 2005 affidavit [redacted] states that he has known the applicant for 25 years, and that from November 1981 to March 1990 the applicant lived at [redacted]

The photocopied airmail envelopes have the applicant's name and [redacted] address handwritten on them. The envelopes themselves are identical. They all appear to have been addressed by the same person. As was noted above, they bear postmarks. Those postmarks are dated November 28, 1980, November 28, 1981, and December 28, 1982.

Curiously, those postmarked envelopes do not have any postage stamps on them. The lack of postage stamps appears to indicate that they were never mailed to the applicant, and are not contemporaneous evidence of the applicant's claimed residence in the United States.

Again, pursuant to *Matter of Ho*, 19 I&N Dec. 582, doubt cast the applicant's proof, absent reconciliation with objective evidence, also casts doubt on the remaining evidence and on the applicant's assertions.

With his application, the applicant submitted his own affidavits and the affidavits of [redacted] The applicant appears to have submitted the addressed, unstamped, postmarked airmail envelopes at his February 2, 2006 interview

In a Notice of Intent to Deny (NOID), dated February 9, 2006, the director stated that the applicant failed to submit evidence sufficient to demonstrate his continuous residence in the United States during the requisite period. The director granted the applicant thirty days to submit additional evidence. The record contains no indication that the applicant responded to that notice.

In the Notice of Decision, dated April 7, 2006, the director denied the application based on the reasons stated in the NOID, that is, that the applicant failed to demonstrate his continuous residence in the United States during the requisite period. The director also noted that the applicant failed to respond to the NOID.

On appeal, the applicant asserted that the evidence demonstrates his eligibility. With his appeal the applicant submitted the affidavits of [redacted] and [redacted], which he claimed to have submitted previously, in response to the NOID.

This office notes that whether or not that evidence was submitted prior to the submission of the instant appeal is not relevant to any material issue. It is relevant evidence and will be considered on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Initially, this office notes that only the affidavits of Abdoulie Touray and the applicant himself assert that the applicant was present in the United States prior to January 1, 1982. The affidavits of [redacted] and [redacted] do not indicate that the applicant was in the United States prior to January 1, 1982. They indicate that the affiants met the applicant in the United States in 1985 and 1987, respectively.

[redacted] stated, in his affidavit, that he lived with the applicant at [redacted] on Manhattan's West Side, from April 1985 to June 1987. However, the applicant himself stated, in the instant Form I-687 application, that he lived at [redacted] Bronx, New York from November 1981 to March 1990. Again, absent objective evidence to reconcile that discrepancy, the reliability of the applicant's evidence and assertions is damaged yet further.

The reliability of the applicant's evidence and his assertions has been so severely diminished that they cannot support his claim of eligibility. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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