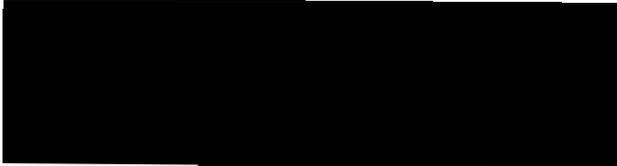


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FILE: MSC 05 187 26774 Office: NEW YORK Date: FEB 08 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "D. King" or similar, with a large flourish at the end.

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. Specifically, the director noted that the applicant had submitted only two affidavits to corroborate his claim, neither of which appeared credible nor amenable to verification. 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 provides additional documentation to establish that one of the affiants was in the United States during the period in which he claims to have met the applicant. He states that he has submitted all evidence available to him and notes that the affiants can be contacted for additional verification.

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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on April 6, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant reported his first address in the United States to be at [REDACTED] New York, New York, where he states he resided from May 1981 until April 1987. The applicant indicated that he later resided at [REDACTED] from April 1987 until January 1998. The applicant indicated at part #33 that he was self-employed as a street vendor on [REDACTED] in uptown Manhattan from 1981 until 1992. The applicant stated at part #16 that he last entered the United States in May 1981, and he indicated no absences from the United States at part #32. The applicant’s residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school

records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

The applicant did not file with his application any corroborating evidence of his residence in the United States during the requisite period. The only document he submitted was a copy of a photo identification issued in Conakry, Guinea in 2002, which appears to be a driver license.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). At the time of his interview with a CIS officer on January 24, 2006, the applicant submitted three letters and affidavits. Two of these letters do not relate to the requisite time period. The applicant submitted a letter dated January 11, 2006 from [REDACTED], who stated that the applicant was employed by [REDACTED] for the last two months. The applicant also submitted an affidavit of witness from [REDACTED], who stated that he met the applicant in New York in 1992. Therefore, these two letters are irrelevant to this proceeding.

The applicant also submitted a copy of his Guinean passport (# [REDACTED]) issued in Conakry, Guinea on December 24, 1990. It is noted that the applicant testified under oath during his interview with a CIS officer that he had never traveled outside the United States since his initial entry in 1981. The fact that the applicant possesses a passport issued in Guinea in 1990 and a Guinean driver license bearing dates in 1995, 1997 and 2002 seriously undermines the credibility of the applicant's testimony regarding his absences from the United States. Although these dates fall outside the relevant period, it is noted that doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted an affidavit from [REDACTED] who stated that he first met the applicant in July 1981 when the applicant was a vendor selling goods at Mart 125 in Harlem, New York. [REDACTED] stated that he often purchased goods from the applicant and eventually became a good friend. [REDACTED] also stated that he would sometimes visit the applicant at his [REDACTED] address, and sometimes attended religious services with him. Although not required to do so, the affiant did not provide proof of his identity or evidence that he resided in New York during the relevant period. He also did not indicate with any specificity how frequently he saw the applicant during the requisite period or any other relevant details, such as where he and the applicant attended religious services. As such, this single affidavit, considered in light of the totality of the record and the applicant's failure to provide any other affidavits or corroborating evidence in support of his claim, can be given only limited evidentiary weight.

On January 26, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the affidavits submitted, but advised the applicant that the affidavits appeared neither credible nor amenable to verification. The director instructed that credible affidavits are those that include some document identifying the affiant, some proof the affiant was in the United States during the

statutory period, some proof that there was a relationship between the applicant and the affiant and a current phone number where the affiant can be contacted for verification.

In response to the NOID, the applicant provided contact telephone numbers for [REDACTED], [REDACTED], and [REDACTED], and a copy of [REDACTED] New York driver license. He stated that he hoped the director would "take my words as they explained themselves."

The director denied the application on March 6, 2006. In denying the application the director determined that the applicant has failed to show by a preponderance of the evidence his residence in the United States during the requisite period. The director noted that the applicant had not overcome the deficiencies noted with respect to the affidavits. The director concluded that the applicant has failed to meet his burden of proof in the proceeding.

Although the AAO concurs with the director's decision, it is noted that the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).

On appeal, the applicant resubmits the affidavits from [REDACTED] and [REDACTED] and provides additional documentation as proof of [REDACTED] identity and **presence** in the United States at the time he claims to have met the applicant in 1992. As noted above, [REDACTED]'s testimony is not relevant to this matter, as he does not claim to have known the applicant in the United States during the requisite period. The applicant reiterates his claim of residence in the United States for the requisite period and indicates that he is unable to obtain contemporaneous documents to support such claim because he was an undocumented alien.

The regulations allow the applicant to submit a broad range of documents to satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide any other relevant evidence apart from [REDACTED]'s affidavit to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The one relevant document submitted by the applicant can only be given minimal weight because it lacks significant detail. The director's denial notice alerted the applicant to the deficiency in his evidence; however the applicant neglected to remedy this deficiency on appeal. Thus, the applicant has not demonstrated with relevant, credible and probative evidence that his claim is probably true pursuant to *Matter of E-M-*, *supra*.

In conclusion, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 with minimal 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.