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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

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

MSC-04-345-17870

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.

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 director denied the application because the applicant failed to overcome the reasons for denial stated in the Notice of Intent to Deny (NOID). The applicant failed to submit objective evidence to overcome inconsistencies identified in the NOID. In the NOID, the director stated that the applicant indicated in his interview with an immigration officer that he did not know one of the individuals who had submitted an affidavit on his behalf. The director also erroneously stated that the applicant had not submitted evidence of his claim to have entered the United States in 1981, although the applicant actually submitted affidavits in an attempt to establish that he entered the United States in 1981. The director determined that the applicant had not demonstrated eligibility for temporary resident status.

On appeal, the applicant stated that he did not provide documentary evidence to prove his entry into the United States in 1981 because he lost this evidence in the process of moving. The applicant requested that his application be reconsidered.

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.

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 10, 2004. 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 listed the following address during the requisite period: [redacted] Bronx, New York from November 1981 to February 1989. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Senegal to visit his family from December 12, 1986 to January 17, 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that he was self-employed as a vendor at [redacted] New York, New York from April 1982 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided three form affidavits. The affidavit from [redacted] states that the

applicant lived at [redacted], Bronx, New York from November 1987 to February 1989. The dates listed on the affidavit appear to have been altered, and these alterations have not been initialed by the affiant. In addition, the information provided is inconsistent with the applicant's Form I-687, which indicates the applicant lived in apartment # [redacted] rather than apartment [redacted], during the requisite period. The affiant also stated that he is able to determine the date of the beginning of his acquaintance with the applicant because, "I used to sell together [sic] at corner of [redacted] and [redacted]' This information is also inconsistent with the applicant's Form I-687, where he indicated he only worked at [redacted] during the requisite period. Lastly, this affidavit states that the longest period in which the affiant has not seen the applicant is zero years and zero months. This is inconsistent with the applicant's Form I-687, where he indicated he was in Senegal for more than one month, from December 12, 1986 to January 17, 1987. These inconsistencies call into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant also submitted an affidavit from [redacted], which states that the applicant resided at [redacted] New York from November 1981 to February 1989. Again, the dates listed on the affidavit appear to have been altered, and these alterations have not been initialed by the affiant. In addition, the information provided is inconsistent with the applicant's Form I-687, which indicates the applicant lived in apartment [redacted] rather than apartment [redacted], during the requisite period. Finally, the affiant stated that he is able to determine the date of the beginning of his acquaintance with the applicant because, "[w]e used to pray attend [sic] Friday's prayers at the mosque." This information is inconsistent with the applicant's Form I-687, where the applicant did not list any mosques when asked for all affiliations and associations. Lastly, this affidavit states that the longest period in which the affiant has not seen the applicant is zero years and zero months. This is inconsistent with the applicant's Form I-687, where he indicated he was in Senegal for more than one month, from December 12, 1986 to January 17, 1987. These inconsistencies call into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit from [redacted] which lists the following addresses for the applicant: [redacted], New York, New York from May 1987 to present; [redacted] Bronx from February 1989 to May 1987; and [redacted], New York, New York from November 1981 to February 1999. This statement is internally inconsistent, and inconsistent with the applicant's Form I-687 where he indicated he was living only at [redacted] Bronx, throughout the requisite period. These inconsistencies call into question whether the affiant can actually confirm the applicant's residence during the requisite period.

In denying the application the director noted that the applicant had not demonstrated eligibility for temporary resident status.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted form affidavits from three people

concerning that period. Each of these affidavits is inconsistent with the information provided in the applicant's Form I-687.

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 contradictions between the applicant's statements on his Form I-687 and his supporting documentation, and given his 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.