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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-197-11578

Office: CLEVELAND (CINCINNATI)

Date: JUN 26 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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Cleveland, denied the application for temporary resident status filed 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). 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, on April 15, 2005 (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. The director specifically noted that the applicant had submitted only two affidavits as proof of his continuous residence, both of which indicated that the applicant lived in New York from November 1981 until January 2005, and that one of the affidavits noted that he lived at the Bryant Hotel. The director concluded that the dates of residence conflicted with the applicant's claim that he resided in New York from 1981 until 2001 and that U.S. Citizenship and Immigration Services (CIS) had established that the Bryant Hotel was torn down many years ago and that affidavits listing residence in the Bryant Hotel were not credible. The director also noted that since the applicant had children who were born in Senegal in 1988, 1991, 1993, 1996, and 2000, with his wife, who according to the applicant had never been to the United States, he could not have lived in the United States during much of the period he claimed to have resided in the country. The director denied the application on August 4, 2007, 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 asserts that he left the Bryant Hotel before it was torn down, in 1984. He also submits an envelope addressed to [REDACTED] at the Bryant Hotel, which he claims contained letters for the applicant and was received in 1997 at the Bryant Hotel, indicating that the hotel existed at that time. He also addresses the director's statement regarding his failure to establish residence in the United States from 1988 to 2000, the period when his children were born in Senegal, explaining that he had traveled to Senegal for six short trips and, thus, has children. The AAO notes that the director erred in placing any weight on this issue, as the applicant did not provide inconsistent information, having listed his six absences on his I-687 Application; and absences from the United States after the requisite period are not relevant to this determination. However, the AAO agrees with the director that the applicant has not established by a preponderance of the evidence that he has continuously resided in the United States in an unlawful status for the duration of the requisite period.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean 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 initial legalization filing 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to affidavits indicating specific personal knowledge of the applicant's whereabouts during the time period in question rather than fill-in-the-blank affidavits that provide generic information.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate by a preponderance of the evidence that he entered before 1982 and resided in the United States for the requisite period, which, as noted above, is from prior to January 1, 1982 through the date when he was discouraged from filing his I-687 Application, between May 5, 1987 and May 4, 1988. In this case, the applicant has failed to meet this burden.

As noted by the director, the applicant has submitted two affidavits as evidence that he was in the United States during the requisite period. They are duplicate "Affidavit of Witness" forms, one from [REDACTED], dated February 7, 2005; and one from [REDACTED] dated February 28, 2006. Mr. [REDACTED] states that he has personal knowledge that the applicant resided in the United States in New York, NY, from November 1981 to January 2005, adding, "I went [to] see him [at] his room at Bryant Hotel." Mr. [REDACTED] states that he has personal knowledge that the applicant resided in the United States in New York from November 1981 to January 2006, adding, "We traveled together from Canada to the United States. We met sometimes till he changed state. I sometimes get a call from him when he went to Ohio." These affidavits contradict the applicant's claim on his I-687 Application that he resided in New York from September 1981 to July 2000. They also fail to indicate where or when the affiants met the applicant or provide any information that would indicate personal knowledge of the applicant's whereabouts during the requisite period. Given the contradictory information and lack of relevant details, the affidavits have no probative value.

The remaining evidence in the record is comprised of the applicant's statements and I-687 Application, in which he claims to have entered the United States in September 1981 and resided in New York until July 2000, visiting Senegal six times during that period. 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 in 1981 and residence in New York are not supported by any credible evidence in the record. In fact, the two affidavits he has submitted contradict his claim. The envelope addressed to [REDACTED] that he submitted on appeal as proof that the Hotel Bryant was operating in 1997, was actually postmarked in 1987. Moreover, as it was not addressed to the applicant, it lacks relevance.

To support his claim, the applicant has submitted only the two affidavits and the envelope described above. For the reasons noted, these documents have no probative value as evidence of the applicant's residence in the United States during the requisite period.

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 documentation in support of his application, and the inconsistencies and contradictions noted above, the applicant 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.