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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-04-321-10405

Office: NEW YORK

Date: **MAY 21 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. 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.

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

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. 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 asserts his claim of eligibility for temporary resident status and that he has submitted credible affidavits as supporting evidence of 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 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).

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) 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. See 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 or her 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 August 16, 2004.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he states that he is a good friend of the applicant and that they grew up together. The affiant indicates in his affidavit that to the best of his knowledge the applicant resided in Dakar, Senegal from 1970 to 1981, and New York, New York from 1995 to 2004. The affiant also stated that the longest period of time during the applicant’s residency in which he has not seen the applicant is 10 years. Here, the affiant fails to specify when he met the applicant in the United States. He also fails to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant’s circumstances and whereabouts throughout the requisite period. The affiant does not indicate that he had relations with the applicant from 1981 to 1995. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that the applicant is his cousin and that he has known him since he was a young boy. The affiant also indicated in his affidavit that the applicant resided in Bamaka (Mali) from 1974 to 1978, and New York, New York from 1986 to 2005. Here, the affiant fails to specify when he met the applicant in the United States. He has also failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. The affiant does not indicate that he had contact with the applicant from 1981 to 1986. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 10, 2005 in which she stated that the applicant is a good and trustworthy friend and that the applicant resided in Mt. Vernon, New York from December of 1981 to May of 2005. Here, the statements made by the affiant are inconsistent with statements made by the applicant on his Form I-687 application at part # 30 where he lists addresses where he resided in New York, New York from 1981 to 2005. There is no mention by the applicant of his living in Mt. Vernon, New York. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. It is further noted that the affiant's statement is not accompanied by evidence that she resided in the United States during the requisite period, and it lacks sufficient details of her relationship with the applicant. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he was a former general manager of the [REDACTED] located at [REDACTED], New York, New York, and that he has known the applicant since 1981 and can vouch for his residence in the United States from 1981 to 2005. Here, the affiant failed to specify the particulars relating to the applicant's residence in the United States. He failed to provide independent documentation to substantiate his claimed knowledge of the applicant's presence in the country. It is noted that the affiant has failed to provide evidence to substantiate his employment claim, including the dates of his employment at the Bryant Hotel. It is further noted that the affiant fails to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- An affidavit from [REDACTED] dated April 3, 2006 in which she stated that she met the applicant in 1981 at the Hotel Mansfield when he sold her some jewelry he had made. She further stated that she lost touch with the applicant thereafter and reconnected with him in 1989. It is further noted that the affiant admits to losing touch with the applicant until 1989, which is subsequent to the requisite period.
- An affidavit from [REDACTED] dated April 3, 2006, in which he stated that he is related to the applicant through his mother, that he met the applicant in Mali in 1974, and that he again saw the applicant in New York in 1986. The affiant further stated that he and the applicant have been in contact with each other since 1986. Here, the affiant does not indicate the frequency with which he saw the applicant in the United States. There is nothing in the record to indicate that the affiant had any contact with the applicant in the United States before 1986. Because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director noted in the NOID that the affidavits submitted by the applicant were not credible and were not accompanied by supporting documentation to demonstrate their presence throughout the requisite period. She further stated that the applicant had failed to submit school records or medical records to substantiate his presence in the United States as a seventeen-year-old child.

In response to the NOID, the applicant stated that he entered the United States in July of 1981 and has resided continuously until after May 4, 1988. He further stated that the affidavits that he submitted were credible and that he was submitting copies of birth certificates and passports to prove their identity and to demonstrate their presence in the United States. The applicant does not address the issues raised by the director concerning his presence in the United States as a child.

In denying the application the director noted that the two affidavits submitted by the applicant in response to the NOID were accompanied by identification documents, but were insufficient to establish their presence in the United States throughout the requisite period. The director also determined that the affiants failed to establish that there was a relationship between them and the applicant during the requisite period.

On appeal, the applicant asserts that the director erred in her decision by summarily denying his application without thoroughly examining the documentation he submitted to substantiate his claim. The applicant further asserts that he submitted copies of identification documents, passports and birth certificates sufficient to demonstrate the affiant's identity and presence in the United States during the requisite period. He does not submit any additional evidence on appeal.

In the instant case, the applicant has failed to overcome the issues raised by the director in the NOI, and in her final decision. It is noted that the applicant has failed to address the issue raised by the director concerning his entry into the United States at the age of seventeen. Although the applicant claims to have resided in the United States since he was seventeen years old, he has provided neither school records nor medical records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. Although he stated during his interview with an immigration officer that he entered the United States in July of 1981 using a visitor's visa, there has been no evidence submitted to substantiate such claim. Here, the applicant has failed to submit evidence sufficient to corroborate his assertions made on appeal. The remaining attestations submitted by the applicant are not supported by independent documentation demonstrating the affiant's presence in the United States or their relation to the applicant during the requisite period.

The absence of sufficiently detailed 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 contradictory statements on his application and 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.