

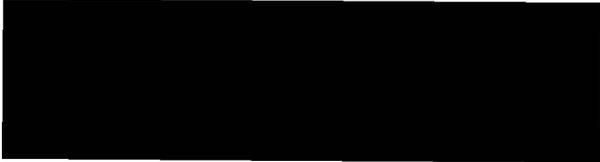
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**JUL 23 2009**

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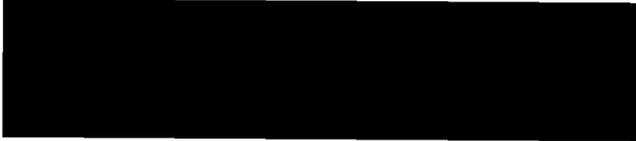
IN RE: Applicant:



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:



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.

John F. Grissom  
Acting 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 director in New York City. The decision is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, a native of Gambia who claims to have lived in the United States since December 1981, 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 March 8, 2005. The director denied the application, finding 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 and was continuously physically present in the United States for the duration of the requisite periods.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement during 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)(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) 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 periods, 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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 an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The AAO notes that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period, other documentation in the record indicates otherwise. The record reflects that the applicant filed two Forms I-687 in 1990 and 2005. The two forms contain contradictory information about the applicant's residences in the United States during the 1980s. On the 1990 Form I-687, the applicant indicated that he entered the United States in 1981 and resided

continuously in the country except for a brief trip outside the United States from October to November 1987, to visit his family in Gambia. The applicant listed the following as his residential addresses in the United States during the 1980s:

- [REDACTED] from 1981 to 1985; and
- [REDACTED] from 1985 to the present (1990).

On the 2005 Form I-687, the applicant indicated that he made one trip outside the United States during the 1980s – a trip to Canada on a business trip – lasting from November to December 1987. The applicant listed the following as his residential addresses in the United States during the 1980s:

- [REDACTED] November 1981 to May 1986; and
- [REDACTED] from June 1986 to June 1991.

The record includes a copy of the applicant's expired passport issued by the Gambian government. The information on the passport shows that it was issued on April 25, 1986 in Gambia. The passport contains numerous entry and exit stamps from various countries in West Africa, evidencing trips made by the applicant to those countries in August, September, November and December 1987, as well as March and April 1988. These trips were made at the same time the applicant claims to have allegedly been residing in the United States.

The applicant has provided contradictory information about his initial entry into the United States and his continuous residence in the country during the requisite period. The contradictory information casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. The applicant did not submit any documentation and the record does not reflect any objective evidence pointing to when the applicant first entered the United States.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period legalization. For someone claiming to have lived in the United States since December 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify

the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of letters and affidavits – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, is suspect and not credible. The letter from Hotel Ashley was signed by a [REDACTED] who identified himself as manager, attesting that he and the applicant shared expenses of living at Hotel Ashley from late 1981 until the applicant moved to another apartment with another person in 1985. The signatory of the letter did not identify the source of his information, such as specific business records, about the applicant's residence at the hotels. Nor is the letter supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the hotel during the years indicated.

As for the affidavits in the record, they have minimalist of fill-in-the-blank formats with very little input by the authors. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interactions with him during the 1980s. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the notarized letters and affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Beyond the decision of the director, the applicant indicated on the 1990 Form I-687, that he was absent from the United States from October to December 1987 – an absence of about 60 days. Also, the entry and exit stamps on the expired passport regarding trips made by the applicant in 1987 and 1988, show that the applicant was outside the United States for more than 45 days. Absences of such duration exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.1(c)(1)(i) for a single absence from the United States. Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), in which the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." As the applicant did not provide any evidence to show that emergent reasons prevented his timely return to the United States from Gambia in 1987 within the 45-days limit, and his lack of acknowledgement that he was outside the United States in August and September 1987, as well as March and April 1988, for an extended period of time could have interrupted the applicant's continuous residence in the United States. On this ground as well, the applicant has failed to establish his eligibility.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.