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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: [REDACTED]  
MSC 05 235 19261

Office: Newark

Date: DEC 06 2007

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 "R. 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, Newark, New Jersey, and 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 May 23, 2005. The district 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. In addition, the district director determined that the applicant was inadmissible under both sections 212(a)(9)(B)(i)(II) and 212(a)(4) of the Immigration and Nationality Act (Act) and had failed to overcome such grounds of inadmissibility. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of residence in this country during the period in question.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of his admissibility, as well as whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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).

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)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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 including affidavits 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.* 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit any evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 23, 2005. 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 [REDACTED] North in Hamilton, New Jersey from April 1979 through at least the date of the termination of the original legalization application period on May 4, 1988. At part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant claimed that he was a self-employed barber earning \$150.00 a week from April 1982 through the date the Form I-687 application was submitted on May 23, 2005. Nevertheless, the applicant failed to include any documentation in support of his claim of continuous residence in this country for the period in question. The fact that the applicant failed to submit any supporting documentation seriously diminished his claim of continuous residence in the United States since prior to January 1, 1982.

On February 22, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based on the finding that the applicant was inadmissible under both sections 212(a)(4) and 212(a)(9)(B)(i)(II) of the Act and his failure to submit any evidence of continuous unlawful residence in the United States from prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a Form I-690, Application for Waiver of Inadmissibility pursuant to Section 245A of the Act in an attempt to overcome those grounds of inadmissibility cited in the previous paragraph. The issue of the applicant's admissibility will be discussed in this decision after an examination of the applicant's continuous residence in this country for the period in question is concluded.

The district director determined that the applicant failed to submit any evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on March 27, 2005.

On appeal, the applicant reaffirms his claim of continuous residence in the United States since April 8, 1979. The applicant indicates that he does not possess additional documents in support of his claim of residence because he was in an unlawful and undocumented status. While it is acknowledged that the applicant may have experienced difficulties in obtaining supporting documentation relating to a period when he was an undocumented alien, the applicant's unlawful status is insufficient to explain his failure to submit any evidence to support his claim of residence in this country for the requisite period.

The absence of any supporting documentation that provides testimony to corroborate the applicant's claim of continuous residence from prior to January 1, 1982 through the date he purportedly attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988 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. The applicant has failed to submit any credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide any independent evidence to corroborate his claim of residence it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The next issue to be examined in this proceeding is whether the applicant has established that he is admissible to the United States under the provisions of section 245A of the Act as required by 8 C.F.R. § 245a.2(d)(5).

Section 212(a)(4) of the Act states in pertinent part that any alien who: "...is likely at any time to become a public charge is inadmissible." The factors to be taken into account in determining whether an alien is inadmissible under section 212(a)(4) of the Act include the alien's age, health, family status, assets, resources, financial status, education and skill, as well as whether any affidavit of support under section 213A of the Act has been submitted on the alien's behalf. Section 212(a)(4)(B) of the Act.

Further, 8 C.F.R. § 245a.2(d)(4) requires applicants for temporary residence under section 245A of the Act to submit proof of financial responsibility in order to determine whether an applicant is likely to become a public charge. Generally, the evidence of employment submitted by an applicant pursuant to 8 C.F.R. § 245a.2(d)(3)(i) will serve to demonstrate the applicant's financial responsibility during the documented period(s) of employment. If the applicant's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the applicant may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. Pursuant to 8 C.F.R. § 245a.2(d)(4), the burden of proof to demonstrate the inapplicability of the ground of inadmissibility arising under section 212(a)(4) of the Act lies with the applicant who may provide:

- (i) Evidence of a history of employment (i.e., employment letter, W - 2 Forms, income tax returns, etc.);
- (ii) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(iii) Form I - 134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

The applicant is forty-two years old and appears to be in good health as reflected in the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated December 16, 2005 that is contained in the record. The applicant stated that he was never married at part #11 of the Form I-687 application and indicated that both of his parents were deceased at parts #19 and #20 of the Form I-687 application. The record does not contain any evidence to reflect that the applicant has children. The record contains no evidence to demonstrate the applicant's level of education or that he possesses any particular skill. The applicant claimed that he was a self-employed barber earning \$150.00 a week from April 1982 through at least May 23, 2005 at part #33 of the Form I-687 application. Although the record does not contain any evidence establishing the applicant ever received public assistance of any kind, he failed to submit any documentation such as tax returns or bank statements to corroborate his claim of employment and demonstrate his means of economic support. The applicant has failed to submit a Form I-134 affidavit of support from a family member guaranteeing complete or partial financial support. Consequently, it must be concluded that the applicant has failed to meet his burden in establishing proof of financial responsibility as required by 8 C.F.R. § 245a.2(d)(4). Therefore, it is also concluded that the applicant is likely to become a public charge and he must be considered inadmissible under section 212(a)(4) of the Act.

Section 212(a)(9)(B)(i)(II) of the Act states in pertinent part that any alien who: "has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible."

The applicant claimed that he unlawfully resided in this country from April 1979 through September 2002 when he traveled to Ghana because of a family emergency. A review of the electronic record reflects that the applicant subsequently reentered the United States as a B-2 visitor on Ghanaian passport [REDACTED] on October 4, 2002. The district director determined that the applicant's reentry into this country with a B-2 visitor's visa in October 2002 rendered him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

This portion of the district director's decision shall be withdrawn. For purposes of section 212(a)(9)(B)(i)(II) of the Act, CIS has designated legalization applicants for lawful temporary residence to be in authorized status during the pendency of their applications through an administrative appeal.

As noted above, the applicant submitted a Form I-690 waiver application in an attempt to overcome those grounds of inadmissibility cited by the district director. The record shows that

the district director subsequently determined that the applicant had failed to show that granting the waiver would satisfy any humanitarian, public interest, or family unity purpose and, therefore, denied the Form I-690 waiver application on March 27, 2006. The applicant had thirty days to submit an appeal to the denial of his Form I-690 waiver application pursuant to 8 C.F.R. § 103.3(a). A review of the record reveals that the applicant has failed to submit an appeal to the denial of his Form I-690 waiver application as of the date of this decision. Therefore, the applicant cannot be considered to have overcome the finding by the district director that he was inadmissible under section 212(a)(4) of the Act.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to his failure to establish that he is admissible to the United States, the applicant has not met this burden. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis as well.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.