

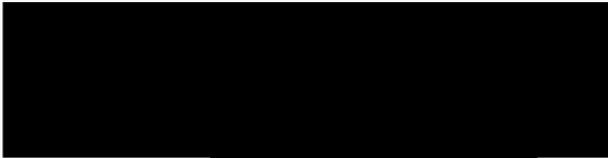
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-132-18611

Office: New York

Date: **APR 17 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:



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 Records 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.

Robert P. Wieman, 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 that an affidavit submitted by Ernest Robert is adequate evidence of his presence in the United States during the relevant period. Further, he states that he was in Senegal but “[he has] . . . no idea exactly how much time had elapsed since I no [sic] have that passport with me.”

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 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 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 February 9, 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 showed his first address in the United States to be in the [REDACTED] New York, New York from 1981 to 1982.¹ Similarly, at part #33, he showed his first employment in the United States was self-employed, as a street vendor, New York, New York. At part #32, where applicants were asked to list all absences from the United States, the applicant indicated one absence during the relevant period for a family visit to Senegal from March 1986 to May 1986.

The applicant submitted the biographic page of the applicant’s passport with the following relevant documentation:

- A form affidavit made July 7, 2005, from [REDACTED] of New York, New York, “. . . that s(he) is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s): I developed my own relation ship with said applicant and continue to date,” and “. . . that the longest period during the residence

¹ The applicant stated in an affidavit made July 20, 2005, that he entered the United States with a visitor’s visa in June of 1981 but he has not provided any documentary information such as a passport with entry stamps or a visa to show such entry.

described in which (s)he has not seen the applicant is 24 (years).” 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. The affidavit submitted is not relevant or probative to either the applicant’s entry into the United States or his presence in the United States during the requisite period since the affiant is stating that for period of 24 years he has not seen the applicant.

A form affidavit made July 18, 2005, from [REDACTED] of the Bronx, New York, “. . . that s(he) is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s): [the line on the form to be filled in by the affiant is blank]” and “. . . that the longest period during the residence described in which (s)he has not seen the applicant is 24 (years).” 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. The affidavit submitted is not relevant or probative to either the applicant’s entry into the United States or his presence in the United States during the requisite period since the affiant is stating that for period of 24 years he has not seen the applicant.

The applicant submitted the two form affidavits that were identical with the exception of the portions to be filled-in by the affiants. These affidavits fail to include detail regarding when or how the affiants first met the applicant and if it was prior to January 1, 1982. The above affidavits do not provide detail regarding how and when the applicant and the affiants met; their frequency of contact during the requisite period; and the applicant’s address during the requisite period. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Evidence submitted by the applicant will be reviewed according to its probative value and credibility. While not required, the affiants failed to submit proof that the affiants were in the United States during the requisite period or an explanation and proof of the relationship between the affiant and the applicant. The affidavits lack sufficient detail to confirm that the applicant resided in the United States during the requisite period and they have slight probative value in this matter.

On August 7, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for **Temporary Resident Status**. Specifically, the director stated, inter alia, that the affidavits of [REDACTED] and [REDACTED] do not any proof that the affiants were present in the United States during the statutory period, information concerning the periods of time that the affiants claimed to know the applicant, or proof of direct personal knowledge of the events being attested.

Further, the director stated that the applicant was in Senegal for a period of two months until May of 1986 and that the applicant offered no evidence “that your return to the United States could not be accomplished during the period due to emergent reasons” that is within 45 days.

The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. In response to the NOID, the applicant submitted no probative evidence² in support of his claim. The applicant did not address the issue of an emergent reason for the length of his absence in 1986.

The director denied the application for temporary residence on August 7, 2006. In denying the application, the director found that the applicant has provided insufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. Specifically the director found that the applicant's evidence and statements lack probative value for the reasons noted in the NOID.

On appeal counsel for the applicant asserts that the affidavit of _____ was substantial and adequate proof of the applicant's presence in the United States during the relevant statutor eriod. Further counsel states that a death certificate and a U.S. passport application of _____, an affiant (submitted in response to the director's NOID) is additional evidence that meets the applicant's burden of proof. Without more, the AAO is unable to ascertain how _____'s statement in the affidavit that "I developed my own relation ship with said applicant and continue to date," and ". . . that the longest period during the residence described in which (s)he has not seen the applicant is 24 (years)" or his passport or death certificate is evidence of residence in the United States relating to the requisite period or the applicant's entry to the United States before January 1, 1982.

Further, counsel contends that that there is no evidence in the record of the applicant's presence in Senegal for a period of two months (i.e. until May of 1986). Counsel is in error. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director did have adequate reason to question the applicant's testimony regarding his absence from the United States for two months, and he gave the applicant an opportunity to clarify the testimony. As already noted, the applicant provided a sworn statement in Form I-687, at part #32, that indicated one absence during the relevant period for a visit to Senegal from March 1986 to May 1986. According to the applicant's affidavit made July 20, 2005, in the record of proceeding the

² The applicant submitted a death certificate, housing photo identification, and a partial copy of a cancelled passport U.S. passport of _____ an affiant.

applicant stated “I left the United States for the first time in March of 1986 to go to Senegal to visit family. I returned to the United States after two months in May of 1986.” The applicant admits that he was in Senegal but “[he has said on appeal that he has] . . . no idea exactly how much time had elapsed since I no have that [a missing] passport with me.” Since the applicant’s recollection as memorialized in the Form I-687 is that he was absent from the United States from March 1986 to May 1986, which is confirmed by the above affidavit, we will accept that as evidence of the duration of his visit. There was no testimony provided for the applicant’s family visit, one of five that he undertook from 1986 through 1999, was emergent.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence or the affidavits noted above. The affidavits lack probative value for the reasons noted.

The statements and affidavits lack credibility and probative value for the reasons noted. Although the applicant has provided proof of residence in the United States such proof does not cover the entire requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period, as well as the insufficient evidence in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.