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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-153-12239

Office: NEWARK

Date: **AUG 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 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 "R. 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, Newark. 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 noted that the applicant was 11 years old when he allegedly entered the United States, but has failed to submit school records as requested. The director also noted that based upon the applicant's statements, he was absent from the United States for more than the 45 day statutory limit, and that he had not presented any proof that he had registered for class membership. The district director further determined that the applicant had not established that applicant was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director determined 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 asserts his claim of eligibility for temporary resident status and states that he has submitted an affidavit sufficient to substantiate his claim.

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 by adjudicating the Form I-687 application. 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).

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 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 March 2, 2005.

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

- An affidavit from [REDACTED] dated January 22, 2006, in which he stated that he met the applicant at the mosque in Lefrack City, Corona Queens and that he and the applicant would meet on a weekly basis from March of 1981 to July of 1988. Here, the affiant fails to indicate the applicant's place of residence during the requisite period. It is further noted that this attestation is inconsistent with the applicant's statement on his Form I-687 application at part # 31 where he fails to indicate an affiliation or association with the mosque in Lefrack City during the time period in question. It is also noted that the affiant fails to indicate that the applicant was only a child at the time that he allegedly met him, and he has failed to express any knowledge of a responsible adult who cared for the applicant and provided for his needs. The affidavit has minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director determined that the applicant had failed to prove eligibility for temporary residence. The director noted that the applicant failed to submit his school records although he indicated on his Form I-687 application that he attended the African Islamic School in New Jersey from December of 1981 to December of 1988. The director also noted the inconsistency in the applicant's statements concerning his absences from the United States. The director indicated that the applicant stated on his Form I-687 application that he was absent from the United States from July of 1988 to May of 2000; and in a letter in response to the Form I-72, he stated that he was "out of the United States between 1986 and 1988." The director noted that in either instance, the absence was in excess of the 45 day statutory limit.

On appeal, the applicant asserts that he is unable to obtain his travel documents because the person who was in possession of them passed away in Africa. The applicant further asserts that he only attended school in the United States on a part-time basis and that the school he attended was not registered per se. The applicant also stated that he traveled outside the United States in 1988 for less than one month. The applicant resubmitted the affidavit from [REDACTED] on appeal.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial. It is noted by the AAO that the applicant submitted copies of his identification cards, and income tax and school records that are dated subsequent to the requisite period, and therefore, are irrelevant to establishing his eligibility for the immigration benefit sought. The applicant has not presented any evidence to demonstrate that his absence from the United States was not in excess of the 45 day statutory limit. The affidavit submitted by [REDACTED] is lacking in detail and is not sufficient to meet the applicant's burden of proof by a preponderance of the evidence. Although the applicant claims to have resided in the United States since he was eleven years old, he has provided neither school records nor immunization 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.

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 reliance upon a single affidavit with little 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.