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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-202-16828

Office: BOSTON

Date: **JAN 02 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Boston, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with Citizenship and Immigration Services (CIS or the Service) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, in his Notice of Intent to Deny (NOID), the director stated that at the time of his interview with a CIS officer, the applicant stated that he first entered the United States on April 10, 1983 as a J-1 exchange visitor. When asked to confirm this as his first date of entry into the United States, the applicant did so. The director noted that the applicant stated that his spouse had never been to the United States and that he had biological children born in Senegal in 1982, 1984, and 1986. The director also noted that both the applicant's testimony and his Form I-687 indicated that he claimed he did not leave the United States at any point in time from 1983 until 1994. However, the director found that entries in the applicant's passport and the presence of biological children born in Senegal to a woman who had never entered the United States were not consistent with the applicant's claim regarding his continuous residence in the United States. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. The applicant did not submit additional evidence in response to the director's NOID. Therefore, the 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 that he has worked for the government of the United States for eighteen (18) years. The applicant further submits a statement from 2002 stating that he worked with USAID in Dakar, Senegal for nineteen (19) years, from 1980 until 1999. He submits a memo from "Ambassador" to all Mission Personnel, informing that certain employees of the U.S. government abroad qualify as special immigrants under Immigration and Nationality Act (the Act) § 101(a)(D) and other documents from USAID that establish that the applicant worked for that agency in Senegal from 1980 until the late 1990's.

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)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or to the Immigration and Naturalization Service (the Service, now Citizenship and Immigration Services or CIS) 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.

Applicants who were nonimmigrant exchange visitors at any time and who are subject to the two-year foreign residence requirement are ineligible to adjust to temporary status unless the requirement has been satisfied or waived pursuant to the provisions of 212(e) of the Act and that applicant has also resided continuously in the United States in an unlawful status since January 1, 1982. 8 C.F.R. § 245a.2(c)(4).

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).

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 (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 has furnished sufficient credible evidence to demonstrate that he resided 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 of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 April 20, 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 that he lived at three addresses during the requisite period as follows: [REDACTED] Arlington, Virginia from April of 1983 until February of 1984; an unknown address on [REDACTED] in Arlington, Virginia from February of 1984 until December of 1984; and "[REDACTED] in New York from December 1984 until May of 1998. At part #33 where the applicant was asked to list all of his employment in the United States since January of 1982, he showed he has never been employed in the United States.

The record also shows that at his interview with a CIS officer on March 8, 2006, the applicant stated that he entered the United States for the first time on April 20, 1983 as a J-1 exchange visitor.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation that is relevant to the requisite period:

- An undated card issued by the Agency of International Development to [REDACTED] from Senegal.
- Photocopies of pages of a Senegalese Passport bearing the name "DIOP" that contains the following pages:
 - A biographic page containing the applicant's name and date of birth and passport number [REDACTED].
 - Page 2 which is not completed.
 - Page 3 which bears a photograph and signature.
 - Page 4 indicating the passport was issued in Dakar, Senegal in March 1983 and that it expires in March 1986.
 - Page 5 which is not completed.
 - Page 6 which indicates an arrival in Senegal on an illegible date and another stamp from the airport in Senegal.
 - Page 7 which contains a J-1 visa issued by the United States Embassy in Dakar, Senegal on March 28, 1983 and a stamp indicates the bearer was admitted to New York on April 10, 1983.
 - Page 10 which indicates an arrival into Senegal on October 26, 1986.
 - Page 11 which shows a B-1/B-2 issued by the United States Embassy in Dakar, Senegal on August 31, 1984 and an entrance stamp into New York dated September 13, 1984.
- A certificate of participation in a program of introduction to the United States of America issued to the applicant in April 1983.
- A certificate showing the applicant participated in a course in organization and management of agricultural cooperatives organized by the US Department of Agriculture and the United States Agency for International Development in 1984.
- A certificate of achievement from the United States Department of Agriculture which indicates the applicant took an agricultural course from April 18 to June 24, 1983.
- A certificate showing that the applicant, who works in Senegal, has completed an agricultural course on October 26, 1984.

- A certificate showing the applicant was made an honorary State Representative of Louisiana on October 11, 1984.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since April 1983 and that he has never worked in the United States. The only evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant attended two courses in the United States, one in 1983 and another in 1984. One such certificate issued by the United States Department of Agriculture, indicates that the applicant lived and worked in Senegal as a project officer in the Agricultural Development Office in 1984 when that certificate was issued.

In denying the application the director noted the above, that the applicant claimed not to have entered the United States before January 1, 1982. He went on to say that the applicant failed to establish that he continuously resided in or that he maintained continuous physical presence in the United States during the requisite periods. The director further stated that it appeared that the applicant provided false information to the Service regarding his residences and his physical presence in the United States.

On appeal, rather than addressing these contradictions, the applicant asserts that he has worked for the government of the United States overseas for approximately eighteen (18) years and indicates that he believes he is eligible to adjust to Temporary Resident Status because of this. In support of his claim, the applicant has re-submits previously described certificates of participation in agricultural courses in the United States and further submits the following documents:

- A memo from "Ambassador" to all Mission Personnel, informing the recipients of the memo that certain employees of the U.S. government abroad can qualify as special immigrants under "Immigration and Nationality Act (the Act) § 101(a)(D)." It is noted that this section of the Act is actually INA § 101(a)(27)(D) and pertains to those whom the Department of State can qualify as employment-based, fourth preference immigrants. The full content of this section of the Act is as follows:
 - 101(a)(27)(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

As this is not a benefit that is within the jurisdiction of the AAO to determine eligibility for, and as it does it pertain to the applicant's Form I-687, this document is not relevant to the matter at hand.

- Certificates of participation that are not relevant to the requisite period.
- A length of service award issued to the applicant on December 19, 1996. This award is for more than fifteen (15) years of service to the government of the United States in Dakar, Senegal. It is

noted that this indicates the applicant was working and residing in Senegal during the requisite period from approximately 1981 until 1996.

- A letter from [REDACTED] stating that the applicant worked in Senegal from August 10, 1980 until September 26, 1998 as a Project Management Specialist with USAID. It is noted that this letter indicates the applicant was not continuously residing in the United States at any point in time during the requisite period.
- A letter from [REDACTED], stating that the applicant worked in Senegal from August 10, 1980 until September 26, 1998 as a Project Management Specialist with USAID. It is noted that this letter indicates the applicant was not continuously residing in the United States at any point in time during the requisite period.

The applicant further submits a statement he wrote in 2002 stating that the applicant worked with USAID in Dakar, Senegal for nineteen (19) years, from 1980 until 1999.

In summary, the applicant has not provided any contemporaneous evidence of having maintained continuous residence in the United States during the 1981-88 period. He did not submit any additional evidence that was relevant to establishing that he maintained continuous residence in the United States with his appeal. Rather, he submitted evidence that established that he maintained continuous residence in Senegal for the duration of the requisite period.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted evidence that he resided in Dakar, Senegal during the requisite period as corroborating evidence of his continuous residence during the requisite period to satisfy his burden of proof. However, these documents submitted with the applicant’s appeal contradict his Form I-687 regarding his addresses of residence and establish that he did not reside in the United States during the requisite period. They establish that he was employed in Dakar, Senegal for the duration of that period, only entering the United States on occasion to attend courses related to that employment.

The absence of documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period and the presence of documentation that establishes that the applicant lived in Senegal during that time 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 between what he showed on his Form I-687 and in other evidence he submitted and his reliance upon documents that establish that he was not in the United States during the requisite period, 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 through the date he attempted to file a Form I-687 application 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