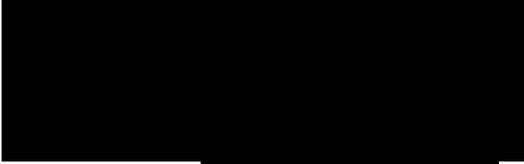


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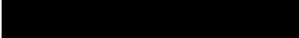


**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



L1

FILE: 
MSC 04 335 10911

Office: NEW YORK

Date: **JAN 22 2008**

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. 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.

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, New York, 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. 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. Specifically, the director determined that the applicant's claim of having entered the United States prior to January 1, 1982 is suspect in light of a statement made by the applicant on his Form G-325A, where he claimed that he initially entered the United States in 1986. The director further concluded that the applicant's withdrawal of the statement made on the Form G-325A is suspect, as the applicant attested to all the statements made on the form under penalty of perjury. The director also noted that the passport pages submitted to support the applicant's claimed absences showed that the passport was issued to the applicant in Cairo, Egypt in 1984, thereby suggesting that the applicant was absent from the United States prior to 1986, contrary to the applicant's claim on Form I-687. 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 reasserts his eligibility and submits additional documentation in support of his claim.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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.* 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 during the requisite time period. In support of his Form I-687 application, which indicates that the applicant commenced residing in the United States in August 1981, the applicant provided the following documentation:

1. An affidavit dated August 4, 2004 from [REDACTED], who claimed that she has known the applicant since August 1985. [REDACTED] stated that she met the applicant in church. Although the affiant provided the applicant's three residential addresses since she first met the applicant, she did not state how frequently she met with the applicant or provide any further information concerning the events and circumstances of the applicant's life during the relevant time period. As this affidavit lacks any details that would lend credibility to an alleged 19-year relationship with the applicant, it can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
2. An affidavit dated August 13, 2004 from [REDACTED] who claimed that he met the applicant in 1981 when the applicant rented a room at [REDACTED] grandmother's house. The affiant provided the applicant's residential addresses since he first met the applicant. However, he did not state how frequently he met with the applicant or provide any further details that would lend credibility to an alleged 23-year relationship. As such, this affiant's statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

3. A copy of the applicant's U.S. visa issued on April 21, 1986 accompanied by a copy of his I-94 showing the applicant's entry into the United States in 1986.

On February 10, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of adverse information that may lead to an unfavorable decision. Specifically, the director noted that the applicant's Form G-325A, which the applicant signed under penalty of perjury, indicates that the applicant first entered the United States in October 1986. The director determined that this information directly contradicts the applicant's claim of having resided in the United States since prior to 1982.

In response, the applicant submitted a letter dated March 2, 2006 from his attorney at the time. Counsel asserted that the director's observation regarding statements made on the Form G-325A was incorrect and further added that "[m]istakes and inconsistencies are routinely made on applications." Counsel suggested that the applicant may have signed the Form G-325A without properly reviewing its contents.

On July 5, 2006, the director issued a final decision denying the applicant's Form I-687. The director found counsel's explanation inadequate, noting that the Form G-325A was signed under penalty of perjury and that it is the applicant's obligation to review any such document for accuracy of the representations made therein. As noted previously, the director made a further adverse finding with regard to the date and place of issue of the applicant's passport. Specifically, the director stated that in light of the fact that the applicant's passport was issued in Egypt in 1984, the applicant must have departed the United States prior to 1986, which the applicant indicated was the year of his first departure from the United States since the claimed commencement of his unlawful residence. It is noted that the applicant must resolve any inconsistencies in the record by submitting independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant provides a copy of a letter dated August 16, 2006 from the Embassy of the United Republic of Tanzania. The letter references the applicant's passport number and states that the passport was issued to the applicant at the Tanzanian embassy in Cairo on September 19, 1984 without the applicant's presence. As the applicant has resolved this inconsistency with sufficient evidence, he has overcome one of the director's adverse findings. However, the other inconsistency between the applicant's claim regarding the date he commenced his unlawful residence and the information provided on his Form G-325A continues to exist. Counsel's suggestion that Citizenship and Immigration Services (CIS) should ignore this inconsistency and simply assume that the information provided on the Form G-325A was not accurate does not satisfy the applicant's burden. As previously stated, any inconsistencies must be resolved with competent objective evidence pointing to where the truth lies. *Id.* 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). As the applicant has not provided the necessary evidence to resolve the inconsistency between the Form G-325A and the claim that he began residing in the United States in 1981, the validity of his claim and the applicant's credibility in general are severely compromised.

Additionally, the applicant has failed to provide sufficient evidence establishing his continuous unlawful residence in the United States during the statutory time period. More specifically, the only contemporaneous evidence the applicant submitted to attest to his residence consists of a Form I-94 showing the applicant's entry into the United States on April 22, 1986, an August 2, 2006 letter from the U.S. Postal Service stating that the applicant opened a post office box on August 6, 1987, and a copy of the applicant's W-2 statement for 1988. The only evidence addressing the time period prior to April 1986 consists of two deficient affidavits that can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

The absence of sufficiently detailed supporting 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 contradictory statements and his reliance upon documents with minimal probative value, 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-*, 20 I&N Dec. 77. 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.