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

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[Redacted]

FILE: [Redacted]  
MSC-05-230-15565

Office: NEW YORK

Date: JUN 30 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:  
[Redacted]

**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.

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. 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, on May 18, 2005 (together, the I-687 Application). 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 noting that information and documentation that the applicant “submitted are insufficient to overcome the grounds for denial.” The director denied the application as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written statement. On appeal, counsel states that “the evidence provided, as well as [the applicant’s] overwhelming testimony at the interview, demonstrate that he is eligible for temporary residency and [that] he was physically present during the requisite time periods.” The applicant submitted additional documents on February 13, 2008. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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 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 is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 18, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED], New York,

New York, from October 1981 to June 1986. At part #33, he listed his only employment in the United States as a self-employed vendor in New York, New York from 1993 to the present. At part #32, the applicant lists one absence from the United States. The applicant states that he visited Senegal from March 1987 to May 1987. At part #31, the applicant lists an affiliation with the [REDACTED] p. at [REDACTED], New York from 1990 to the present.

The applicant has provided one affidavit; two employment letters; a copy of the applicant's 2006 Internal Revenue Services Form 1040EZ; a copy of the applicant's Office of Unemployment Compensation notice dated December 27, 2007; copies of the applicant's passports, the most recent issued on December 9, 2005; a copy of the applicant's visitor's visa issued on May 27, 1999 in Dakar; and a copy of the applicant's bank statements for 2006. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the relevant time period. The record contains three letters from persons other than the applicant:

A notarized letter from [REDACTED] dated October 7, 2006. The AAO notes that the letter was notarized in Senegal and the declarant states that he lives in Thilleboubacara City of Saint Louis. The declarant states that the applicant and his father "stayed in [his] house in September 1981 while they were getting ready to travel to Latin America and then to their final destination which was the United States." The declarant adds that he has "received and handed to their family all of the money they [have sent] to their family from December 1981 to July 1993." Although the declarant claims to have received money for the applicant's family, he provides no details, such as the amounts received, how they were transmitted, and the specific locations from which the sums were transmitted. Also, there is no explanation of why money for the family was not transmitted directly to it. Furthermore, there is no evidence in the record of proceeding that the applicant forwarded money to his family in Senegal. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter from Sofa Express and More written by [REDACTED] human resources generalist, and dated December 5, 2007. Ms. [REDACTED] states that the applicant has been employed as a warehouse associate since March 13, 2006. Ms. [REDACTED] adds that the applicant 40 hours per week and makes \$9.71 per hour. The statement is not on company letterhead and it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable
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may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Furthermore, the relevant period for this application is from January 1, 1982 to May 4, 1988 and the declarant's statement encompasses a time period after the relevant period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter from Sofa Express signed by [REDACTED], warehouse manager, and dated December 14, 2007. Mr. [REDACTED] provides an employment reference for the applicant. Although, the statement is on company letterhead, it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Furthermore, the relevant period for this application is from January 1, 1982 to May 4, 1988 and the declarant's statement encompasses a time period after the relevant period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in October 1981 when he was 14 years old. The applicant states that he "lived in the shadows" and feared being "caught and deported." He states that his name was not on a bill or on a lease. The applicant adds that it is difficult to "present documents when one is illegal." On appeal counsel argues that "officers should take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence." However, the applicant has not provided any evidence of his entry into the United States or of his residence during the requisite period other than an affidavit from [REDACTED] who lives in Senegal and whose affidavit does not establish that he has definite knowledge of the applicant's whereabouts for the requisite period. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, at part #32 of the Form I-687, the applicant states that he visited Senegal from March 1987 to May 1987. However, during his January 25, 2006 interview the applicant stated that that he visited Senegal from March 1987 to June 1987. According to the interview notes, the applicant also visited Senegal for one month each year from 1983 to 1986 and from 1988 to 1989. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is

incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on January 26, 2006. The director denied the application for temporary residence on March 9, 2006. On April 27, 2006, the applicant appealed the decision and argued that he did not receive the director's NOID. On August 22, 2006, the director reopened the applicant's case providing the applicant with the opportunity to respond to the director's NOID. The applicant submitted a statement in response. The director denied the application for temporary residence on September 15, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel states that "the evidence provided, as well as [the applicant's] overwhelming testimony at the interview, demonstrate that he is eligible for temporary residency and [that] he was physically present during the requisite time periods." However, as stated above, the applicant has not provided any evidence of his entry into the United States or of his residence during the requisite period other than an affidavit from [REDACTED] who lives in Senegal and who does not establish that he has definite knowledge of the applicant's residence in the United States through the requisite period. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 lack of credible supporting documentation, it is concluded that the applicant 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.