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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-04-307-10394

Office: NEW YORK Date:

MAY 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:

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.

*for Michael T. Kelly*  
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 August 2, 2004 (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 “the 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, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a brief or statement. The applicant did not submit any additional evidence along with the Form I-694, but stated on the Form I-694 that he had “submitted all the supporting evidence that [is] available to [him] showing that [he lived] here during the statutory period.” As of this date, the AAO has not received a brief or 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)(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 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. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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 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 August 2, 2004. 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 Hotel Bryant, New York, New York, from 1981 to 1984. At part #33, he listed his first and only employment in the United States as a self-employed vendor in New York, New York, from 1981 to the present. At part #32, the applicant listed one absence from the United States during the relevant time period. According to the Form I-687, the applicant visited Senegal from July 1987 to August 1987.

The applicant has provided three affidavits from the same individual; a copy of the applicant's New York driver's license issued on March 1, 2005; a copy of the applicant's employment authorization document issued on January 12, 2005; and a copy of the applicant's passport. The applicant's New York driver's license, employment authorization card, and passport are evidence of the applicant's identity, but do not demonstrate that he entered before 1982 and resided in the United States for the requisite period. The following evidence relates to the requisite period:

- A form-letter "Affidavit of Witness" from [REDACTED] dated December 8, 2005. The declarant states that he lives in Bronx, New York and that he has personal knowledge that the applicant resided in New York from 1981 to the present. He lists four addresses for the applicant from 1981 to the present. He lists the applicant's first address as Hotel Bryant, New York, New York and indicates that the applicant lived there from 1981 to 1984. He also states that he attended the "same African Islamic school" with the applicant and that they "live in the same neighborhood." Although the declarant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a more than 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, there is no evidence in the record of proceeding that the declarant resided in the United States during the requisite period. 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 form-letter "Affidavit of Witness" from Alassane Fall dated December 8, 2005. The declarant states that he is a witness of the applicant "having temporarily left the U.S. to travel abroad after November 6, 1986" and that "due to that temporary absence from the U.S., [the applicant] could not manage to successfully file for the benefits for the LULAC/CSS amnesty program." The declarant does not indicate how he has personal knowledge of the applicant's travel abroad or how such travel kept the applicant from filing for benefits. Furthermore, the declarant does not provide dates for the applicant's "temporary absence" from the United States. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he traveled to Senegal from July 1987 to August 1987 and was denied the opportunity to file for benefits during the original legalization application period of May 5, 1987 to May 4, 1988.

- A form-letter “Affidavit of Witness” from [REDACTED] dated December 9, 2005. The declarant states that he lives in Bronx, New York and that he has known the applicant “before December 31<sup>st</sup>, 1981 in New York City.” As in the previous affidavit, the declarant lists four addresses for the applicant from 1981 to the present. He lists the applicant’s first address as Hotel Bryant, New York, New York and indicates that the applicant lived there from 1981 to 1984. As noted above, although the declarant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a more than 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, there is no evidence in the record of proceeding that the declarant resided in the United States during the requisite period. 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.

For the reasons noted above, the documents submitted in support of the applicant’s claim have been found to lack credibility or to have minimal probative value as evidence of the applicant’s residence and presence in the United States for the 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 1981 without inspection and to have resided for the duration of the requisite period in New York. In his notarized statement, the applicant states that he has paid his rents through someone else and he has never departed or entered the United States in an official manner. The applicant states that he lived at the Hotel Bryant from 1981 to 1984, when the hotel was still in business and that he was not able to “keep a paper trail” in order to prove his residence in the United States. Finally, he states that the only documents that he can provide are affidavits “from few acquaintances.” The AAO notes that the record of proceeding only contains affidavits from one individual, [REDACTED] and as noted above, [REDACTED]’s affidavits lack sufficient detail to be found credible or probative. 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)). 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 November 16, 2005 and on April 2, 2006. The director denied the application for temporary residence on August 11, 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. In addition, the director noted that the applicant did not address

the deficiencies noted in the director's notice of intent to deny. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant stated on the Form I-694 that he had "submitted all the supporting evidence that [is] available to [him] showing that [he lived] here during the statutory period." The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

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.