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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-091-13861

Office: NEW YORK

Date: OCT 02 2006

IN RE: Applicant: [REDACTED]

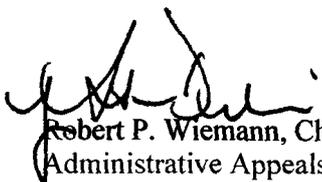
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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 December 30, 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 the information and documentation “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, five affidavits, and an email. On the Form I-694, the applicant states that he meets all of the requirements for temporary residence. He states that he entered the United States in 1981 with his father and remained here. He states that he has tried “in vain” to obtain a duplicate Form I-94. On July 25, 2008, the AAO issued a request for evidence providing the applicant with 60 days to respond. On September 8, 2008, the AAO received three items from the applicant. 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. 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 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 December 30, 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 February 1981 to December 1992. At part #33, he listed his first employment in the United States as a self-employed vendor of cell phone bags in New York, New York from August 2003 to November 2005. At part #32, the applicant listed two absences from the United States. The applicant returned to Mali from December 1991 to February 2000 and went to school in Canada from March 2000 to May 2003. At part #31, the applicant did not list any affiliations or associations.

The applicant has submitted several affidavits; an email from [REDACTED] of the French American School of New York; a copy of the applicant's passport issued on December 8, 1999; and a copy of the applicant's Canadian visitor's visa issued in Abidjan on January 28, 2000. 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 May 4, 1988 and is not probative of residence before that date. The following evidence relates to the requisite period:

- Two affidavits from [REDACTED] dated July 24, 2006 and August 19, 2006. The affiant states that she lives in Brooklyn, New York and that she cared for the applicant, "as a favor" to her friends, his parents, from 1981 to 1992. The affiant states that while under her care, the applicant "attended the French American School from 1984 to 1991." She adds that she cared for the applicant "as one of her own children for roughly eleven years." The affiant also states that she "received financial aids on a regular basis for basic needs from his biological parents." Although the affiant states that the applicant was under her care from 1981 to 1992 as a "favor" to his parents, the statement does not supply enough details to lend credibility to such an arrangement. The affiant states that the applicant's parents are her friends but does not state how she and the applicant's parents came to be friends or why they chose her to take care of their son. Finally, the affiant does not indicate where she lived with the applicant from 1981 to 1992 or how she dates the time period during which the applicant lived with her. 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.
- Two affidavits from [REDACTED] dated July 24, 2006 and August 19, 2006. The affiant states that she lives in Brooklyn, New York and that she lived with the applicant from 1984 to 1992. In the first affidavit, the affiant stated that the applicant had lived

with her “for a very long time” and did not provide a timeframe. The affiant states that they lived together because her “mother had been caring for him since 1981 as a favor to a couple of friends.” The affiant adds that the applicant has been in the United States since her birth and that she has been told that he has been in the United States since 1981. Although the affiant states that the applicant lived with her and her family since her birth in 1984 to 1992, the statement does not supply enough details to lend credibility to a 22-year relationship with the applicant. The affiant does not state why she is certain that the applicant lived with her since her birth. 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.

- An affidavit from [REDACTED] dated August 11, 2006. The affiant states that he lives in New York, New York and that he has known the applicant “for more than twenty-four years.” The affiant states that he has known the applicant since “the age of three” and that they “lived in the same neighborhood as kids.” The affiant also states that he first met the applicant when the applicant “first moved here from Africa in 1982.” The AAO notes that this statement contradicts the applicant’s statement regarding his first entry into the United States. 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 application. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the affiant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The affiant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit 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.

An affidavit from [REDACTED] dated May 24, 2006. The affiant states that he lives in Brooklyn, New York and that he has personally known the applicant. The affiant states that the applicant is his cousin. The affiant also states that he knows the applicant, speaks with the applicant and sees the applicant regularly while the applicant is here in New York. The affiant adds that the applicant “has been visiting New York regularly for the last ten years.” The AAO notes that the affiant does not state that the applicant has lived in New York, but that the applicant has been visiting New York since 1996. This statement contradicts the information on the applicant’s Form I-687 which states that the applicant lived in New York since 1981. 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 application. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, this affidavit does not provide information regarding the applicant's entry into the United States or residence in the United States during the requisite period. Given these deficiencies, this affidavit 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.

- An affidavit from [REDACTED] dated August 20, 2006. The affiant states that she lives in Brooklyn, New York and that the applicant is her husband's cousin. The affiant states that she has known the applicant "for the past couple of years." The affiant also states that during many of her conversations with the applicant, "he often speaks of his past." The affiant states that "to the best of [her] knowledge and understanding," the applicant has been in the United States "since the early 80s." The AAO notes that the affiant states that she has only known the applicant "for the past couple of years" and therefore does not have personal knowledge of the applicant's residence during the requisite period. Given these deficiencies, this affidavit 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.
- An affidavit from [REDACTED] and [REDACTED] dated July 18, 2006. The affiants state that they are the applicant's parents and that they were in charge of his "vital needs (financial, food clothing and school) from February 2, 1979 to December 2004" including the time he spent in New York "when he visited in 1981." The affiants certify that the applicant's presence in the United States was from "1981 to 1992." Although the affiants state that the applicant visited New York in 1981, they do not state why a visit turned into a residence from 1981 to 1992. The affiants do not indicate who cared for the applicant from 1981 to 1992, why they left their two-year old son in the United States, or how they date the applicant's initial visit to the United States. Given these deficiencies, this affidavit 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.
- An email from [REDACTED] of the French American School of New York dated July 25, 2006. The email states that the applicant "has requested a copy of his scholastic files from the French American School which he attended from 1984 until 1991. Unfortunately, the school is closed for the summer and we will be unable to obtain these files until the beginning of September." On appeal, the applicant states that through this email, the school acknowledges his attendance. However, the email appears to be written as a paraphrase of the request for a transcript and not as a confirmation of attendance. This email cannot be given the same weight as a transcript showing that the applicant attended the French American School of New York from 1984 to 1991. Given these deficiencies, this document 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.

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 with his father. 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 June 26, 2006. The director denied the application for temporary residence on July 28, 2006. In her decision, the director restated her concerns regarding the conflicting information in the record of proceeding. 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, the applicant states that he meets all of the requirements for temporary residence. He states that he entered the United States in 1981 with his father and remained here. He also states that he has tried "in vain" to obtain a duplicate Form I-94. In response to the AAO request for evidence, the applicant submitted two medical documents and school transcripts.

The applicant submitted the patient's copy of a document from the Harlem Hospital Center for emergency services. The document is a preprinted form that includes a handwritten date of July 19, 1981 and the applicant's name and an address at "[REDACTED]". The document also lists the applicant's father as guarantor and lists an address at "[REDACTED]" for him. [REDACTED] is included as the "person to be notified" and her address is written as "[REDACTED]". The amount due for services is listed as "\$375.00." The AAO notes that the diagnosis is difficult to read and only the word "chest" is legible.¹

The applicant submitted a consultation record from Generations+/Northern Manhattan Health Network, Harlem. This document is a preprinted form with handwritten information. Although the document includes the applicant's name, this document appears to be fraudulent for several reasons. The document includes a "reason for consultation" date of August 21, 1981 and a "consultant's findings and recommendations" date of August 26, 1981. The document also includes the date September 4, 2008 and the applicant provides no explanation as to why the document includes this date. While some of the writing is illegible, this document appears to have been originally written for a female. Under the consultant's findings and recommendations

¹ The document submitted includes a "Patient's Bill of Rights" and under number 15 states that the applicant has the right to "obtain a copy of [his] medical record."

the consulting physician wrote "OB, [illegible] obstetric." According to the *American Heritage Stedman's Medical Dictionary*, obstetrics is "the branch of medicine that deals with the care of women during pregnancy, childbirth, and the recuperative period following delivery."² The applicant indicated in the Form I-687 that he is male and there is no evidence in the record of proceeding that would indicate otherwise. 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 application. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the request for the evidence the applicant submitted transcripts inside of a wire-bound promotional booklet for the French-American School of New York. The transcripts submitted do not appear to be original for several reasons. Although the papers on which the transcripts are printed include the school logo, the logo used appears to have been enlarged from a much smaller original and letters on what should be a preprinted logo or letterhead are cut off. The applicant submitted transcripts for 1984 through 1991. The transcripts appear to be copies and none of the transcripts include a signature or school seal indicating that the transcripts are original. The AAO notes that while the first page states that the applicant attended the school for 10 years from 1981 to 1991, the applicant only included transcripts for 1984 through 1991 and no explanation is provided regarding the omission of these transcripts. Furthermore, the transcripts submitted are inconsistent with [REDACTED] affidavit which states that the applicant "attended the French American School from 1984 to 1991." 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 application. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

² See <http://dictionary.reference.com/browse/obstetrics>.

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.