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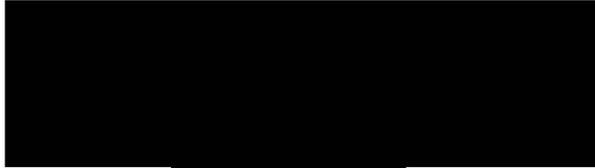
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L1



FILE:

MSC-05-190-14178

Office: NEW YORK

Date:

**OCT 07 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. 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. 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. 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 asserts that he has been residing continuously in the United States since June 15, 1981. The applicant furnishes additional documentary evidence.

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 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.* 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on April 8, 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 showed his first address in the United States to be in New York, New York from May 1981 until September 1988. At part #33, he showed that he was a self-employed in the import and export business in New York, New York from 1981 until 1988.

On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director found that the applicant failed to submit any corroborative evidence of his entry and residence in the United States during the requisite period. The director determined that the applicant failed to submit documents that constitute by a preponderance of the evidence his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding. The director afforded the applicant 30 days to submit additional documentation in rebuttal to the NOID.

In response to the NOID, the applicant submitted the following documentation:

- A fill in the blank notarized statement from [REDACTED], dated February 7, 2006. This statement provides that [REDACTED] first met the applicant through his sister in December 1981 in New York City. However, it does not indicate how he dated his initial acquaintance with the applicant. The statement further provides that they have attended social events together and intermittently met at social gatherings. However, this statement fails to provide any relevant details on the social gatherings they purportedly attended together. There is no indication that these social gatherings were located in the United States or that they were during the requisite period. Furthermore, the statement does not indicate how frequently Mr. [REDACTED] was in contact with the applicant. Given this deficiency, this statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill in the blank notarized statement from [REDACTED], dated February 6, 2006. This statement provides that [REDACTED] first met the applicant at a friend's house on December 18, 1981 in New York City. However, it does not indicate how he dated his initial acquaintance with the applicant. The statement further provides that the applicant is his good friend and a god fearing person. However, this statement fails to provide any information on the frequency of [REDACTED] contact with the applicant in the United States during the requisite period. Given this deficiency, this statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On March 8, 2006, the director issued a notice to deny the application. In denying the application, the director found that the applicant submitted no evidence of his entry into the United States in May 1981. The director found that the affidavits (notarized statements) the applicant furnished appear to be neither credible nor amenable to verification. The director noted that the statements do not include the authors' identification documents, contact phone numbers, and any proof that they were in the United States during the requisite period. The director further noted that the statements offer no proof of the authors' direct personal knowledge of the events and circumstances of the applicant's residency. The director determined that the applicant failed to submit credible documents that establish by a preponderance of the evidence his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that he has been residing continuously in the United States since June 15, 1981. The applicant states that he entered the United States with a Nigerian passport with an attached Form I-95A (Crewman's Landing Permit). The applicant states that his documents including the passport were lost in a robbery. The applicant states that he is not in possession of an airline ticket because he lost the document with his passport when he traveled to Nigeria. The applicant states that he is attaching copies of a police report from Nigeria and his Form I-94<sup>1</sup>. The applicant resubmits the notarized statements from [REDACTED] and [REDACTED]

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<sup>1</sup> The record does not show a copy of the applicant's Form I-94. Instead, it shows that the applicant furnished a copy of his Form I-95A.

and indicates that they were present in the United States before 1982. The applicant states that he was a rooming tenant and had no lease or receipts.

The applicant submitted the following documentation:

- Copies of [REDACTED] United States Naturalization Certificate and [REDACTED] [REDACTED]'s New York City Department of Desi and Construction identification card. These documents establish the identity of [REDACTED] and [REDACTED]. The applicant also furnished [REDACTED] bank account transaction book, which shows his bank transactions in the United States during the requisite period. This document establishes presence in the United States during the requisite period.
- A copy of an affidavit from the applicant, dated December 28, 1989, sworn before the High/Magistrate Court of Lagos State, Nigeria. This affidavit provides that the applicant lost his international passport, I.D. card and passbook while in transit.
- A copy of a Nigeria Police Force Station Diary Extract, dated December 28, 1989. This document provides that the applicant came to the police station with the aforementioned affidavit to report that he lost his international passport, I.D. card and passbook.
- A copy of the applicant's Form I-95A, Crewman's Landing Permit. This permit bears a New York City arrival stamp dated June 1, 1988. The applicant indicated with a handwritten note that this is his second passport. This document is evidence of the applicant's presence in the United States after the requisite period. Therefore, it is without any probative value in this proceeding.

The applicant has failed to overcome the basis for the director's denial of his application. On appeal, the applicant addressed his failure to provide documentation of his first entry into the United States. However, he has given inconsistent testimony regarding the date of his first entry. The applicant indicated on his Form I-687 and during his interview that he first entered the United States in May 1981. The applicant later indicated on the appeal notice and in his appeal statement that he first entered the United States on June 15, 1981. This inconsistency undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982. Furthermore, the applicant failed to submit sufficient evidence to establish that he has resided in the United States during the requisite period. The director stated that the notarized statements from [REDACTED] and [REDACTED] offer no proof that they have direct personal knowledge of the events and circumstances related to the applicant's residency. On appeal, the applicant furnished the identity documents of [REDACTED] and [REDACTED], and evidence of [REDACTED]'s residence in the United States during the requisite period. However, the applicant failed to furnish additional statements from these individuals to establish their direct personal knowledge of his residence in the United States during the requisite period. The applicant instead resubmitted the previous statements from [REDACTED] and [REDACTED]. As discussed, these statements are without any probative value as corroborating evidence. Pursuant

to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistency noted in the record, seriously detract 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 inconsistency in the record and the lack of credible supporting documentation, it is concluded that he 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.