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U.S. Citizenship  
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Services

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FILE:

MSC-04-343-11599

Office: NEW YORK

Date:

**SEP 15 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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 denied the application on February 8, 2007. The director found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director stated that she contacted witnesses that had provided written statements in support of the Form I-687 application, and that the information provided by those witnesses when contacted conflicted with information provided in their written statements. In addition, the director noted that the applicant had submitted a copy of a passport that was issued to him in Dakar, Senegal on July 28, 1983. The passport contained a visa that was issued to him in Dakar, Senegal on July 25, 1985. The director found that the issuance dates of the passport and visa indicated that the applicant had been outside of the United States for more than one hundred and eighty days and that this absence constituted a break in any continuous residence in the United States.

On appeal, the applicant disputes the director's findings. The applicant has submitted an updated witness statement from [REDACTED] in which the declarant again states that he has known the applicant since 1981. With respect to the passport issuance, the applicant claims that he was able to apply for and receive a passport from Dakar, Senegal even though he was residing in the United States at the time.

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) 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. See 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).

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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 7, 2004. In support of his application, the applicant submitted an affidavit from [REDACTED] dated November 28, 2005. The affiant states that he has known the applicant since June 1981. The affiant also states that the applicant resided at the [REDACTED] on [REDACTED], but does not explain the basis of this knowledge. Further, the affiant does not explain the circumstances under which he came to know the applicant, how he dates his initial acquaintance with the applicant, or the nature and frequency of his contact with the applicant during the requisite period. In addition, the director noted in her decision that [REDACTED], when contacted by the director, had stated that he did not have personal knowledge of the applicant’s entry into or residence in the United States.

**On appeal, the applicant has submitted an additional written statement from [REDACTED].** The statement is not dated or notarized. In this statement, [REDACTED] affirms that he has known the applicant since January 1981. This conflicts with the earlier affidavit in which he stated that he has known the applicant since June 1981. It also conflicts with the applicant’s testimony before an immigration officer where he testified that he entered the United States in

February 1981. In addition, this statement lacks detail and fails to address any of the deficiencies noted by the director. As a result, the affidavit and written statement from [REDACTED] will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a letter from [REDACTED] dated December 1, 2005. The declarant states that she has known the applicant since 1982, and that the applicant did business with her brother and family. The declarant does not claim to have personal knowledge of the applicant's residence in the United States during the requisite period and does not provide details regarding the frequency or nature of her contact with the applicant during the requisite period. Further, the director noted that when [REDACTED] was contacted, she provided information that conflicted with the information in the written statement. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of a passport issued to him by the Republic of Senegal on July 28, 1983. As noted by the director, the place of issuance was Dakar, Senegal. The applicant claims that he was residing in the United States when this passport was issued to him. However, the applicant's address is listed in the passport as [REDACTED], Dakar. Therefore, the applicant's claim to have been residing in the United States at the time the passport was issued is not credible.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire 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 contradictory information in the record and the applicant's 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 for the requisite period 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.