

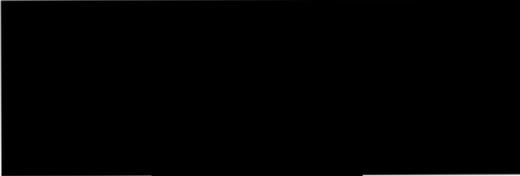
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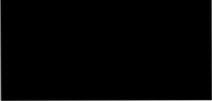
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:



Office: NEW YORK

Date:

**SEP 18 2008**

consolidated]

MSC-05-204-12016

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.

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 Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he 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 found that the affidavits submitted by the applicant in support of his application were not credible. The director also noted that the applicant provided conflicting information regarding absences from the United States. In addition, the director found that the applicant indicated in a previously filed Application for Asylum (Form I-589) that he entered the United States in 1994.

On appeal, the applicant asserts that the affidavits submitted were credible and requests that the director's decision be overturned. The applicant has not addressed the discrepancies noted between his Form I-687 application and his earlier asylum application, and he has not submitted additional evidence in support of his appeal.

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 April 22, 2005. At part #30 of the Form I-687 application, where applicants were asked to list all residences in the United States since first entry, the first period of residence the applicant listed began in 1981.

As noted by the director, the information in the Form I-687 application conflicts with information provided by the applicant on a previously filed application. Specifically, the record contains a G-325A Biographic Information which was submitted along with the applicant’s Form I-589 application, on which the applicant indicated that he resided in the Republic of Guinea from September of 1964 (when the applicant was born) until April of 1994. The applicant also indicated on the Form G-325A that he had been employed as a truck driver and mechanic in Guinea from November 1984 until April 1994. These are material inconsistencies which detract from the credibility of the applicant’s claim to have resided in the United States throughout the requisite period and tend to indicate that he entered the United States in 1994. As noted above, the applicant has failed to provide any explanation for these discrepancies.

Even aside from these inconsistencies, the evidence submitted by the applicant fails to establish his eligibility for temporary resident status. The applicant submitted the following in support of his application:

- An affidavit from [REDACTED] dated December 1, 2005. The affiant states that he met the applicant in front of his church on July 7, 1982 and that he became friends

with the applicant following this initial meeting. The affiant also states that the applicant did some work for him such as painting, plastering and other “little odd jobs.” This affidavit lacks probative details such as the nature and frequency of the affiant’s contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 1, 2005. The affiant states that she met the applicant in July of 1982 through a friend. This affidavit lacks probative details such as the nature and frequency of the affiant’s contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 29, 2005. The affiant claims to have personal knowledge that the applicant resided in the United States from November 1981 until February 1986. However, the affiant does not explain the basis of this knowledge. The affiant also states that the applicant is a “great friend.” However, the affiant does not explain how or when he met the applicant, and does not explain the nature and frequency of his contact with the applicant. In light of these deficiencies this 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.
- An affidavit from [REDACTED] dated November 29, 2005. The affiant claims to be the General Manager of the Parkview Hotel and claims that the applicant resided at the Parkview Hotel from November 1981 until February 1986. The director noted that the affiant, [REDACTED] has provided similar affidavits for many other applicants. The director also stated that [REDACTED] was contacted but refused to provide any information. Given these deficiencies, and the applicant’s inability to provide any evidence to corroborate [REDACTED]’s written testimony, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

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 statements on previous applications and the applicant’s reliance upon documents with little or no probative value, it is concluded that the applicant 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.