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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:

MSC-05 260 10512

Office: NEW YORK CITY

Date:

JUL 02 2009

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting 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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant a native of Mali, who claims to have lived in the United States since December 1981, 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 June 17, 2005. The director denied the application, finding (1) 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 and (2) that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits.

On appeal the applicant asserts that he has submitted sufficient evidence to establish that he meets the continuous residence requirement for the requisite period. He provides some explanation for the evidentiary discrepancies and deficiencies stated in the director's Notice of Decision and submits additional documentation.

The AAO notes that in the Notice of Intent to Deny (NOID) dated March 8, 2006, the director did not notify the applicant of her intention to deny the application on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits as required under the settlement agreement. The AAO further notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Thus, the director's decision to deny the application on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn.

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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the

application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The applicant who claims to have traveled to the United States with his father in December 1981, was about 11 years old in 1981. The applicant did not submit any documentation from his father to establish such entry or any other documentation such as school records, hospital or medical records, which is expected from a child of 11 to have over the period the applicant claims to have resided in the United States. Also, the applicant did not submit credible documentation from an adult or guardian who took care of him during his minor years.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the date of filing the application consists of the following:

- Two airmail letter envelopes addressed to the applicant at [REDACTED] New York, New York with a postmark that appears to read "02-02-1982," and at [REDACTED] New York, New York, with a postmark that appears to read "04-04-1983," from individuals in Mali.
  - A photocopied statement from Bronx Lebanon Hospital Center, dated May 17, 1983, addressed to the applicant in care of [REDACTED] at [REDACTED], New York, for some unspecified medical treatment received by the applicant on March 9, 1983 and at some other unspecified date.
  - A letter from [REDACTED], records room manager at Bronx-Lebanon Hospital Center in Bronx, New York, dated June 25, 2007, stating that the applicant had been a patient at the Center in May 1983.
- A notarized letter from [REDACTED] a resident of Bronx, New York, dated June 29, 2007, stating the applicant and his father lived with him when they first came to the United States in 1981.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The two airmail letter envelopes addressed to the applicant at [REDACTED] New York with a postmark that appears to read "02-02-1982," and at [REDACTED], New York, with a postmark that appears to read "04-04-1983," from

individuals in Mali, do not appear to be genuine. None of the envelopes bear a United States Postal Service mark to show that it was received and processed in the United States before delivery to the applicant. The applicant did not identify any of the addresses on the envelopes as his residences in the United States during the 1980s or at any other time. In fact, the applicant identified only one address – [REDACTED] New York, as his only residence in the United States. Doubt cast on any aspect of the applicant's evidence reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The letter from [REDACTED] who identified himself as records room manager at Bronx-Lebanon Hospital Center, and the photocopied statement from Bronx Lebanon Hospital Center, dated May 17, 1983, addressed to the applicant in care of [REDACTED] at [REDACTED]

[REDACTED] Bronx, New York, do not appear to be genuine. [REDACTED] vaguely stated that the applicant was a patient at the Center in May 1983, but did not identify the applicant's address, did not specify the nature of the medical treatment, and did not supplement the letter with medical records to show that the applicant was seen at the hospital in May 1983. In addition, the letter is inconsistent with the statement from the same hospital dated May 17, 1983. The statement identified the applicant as the patient, indicated that the applicant was seen at the hospital for a pediatric-physical on March 9, 1983 and that the applicant had a past due balance of \$384. The statement was however, addressed to the applicant at an address in Bronx, New York, which the applicant did not identify as any of his addresses in the United States. For the reasons discussed above, the medical documents have little probative value as credible evidence of the applicant continuous residence in the United States during the requisite period.

The notarized letter from [REDACTED], who claims to be the applicant's father's cousin, has minimalist format with very few details about the applicant's life in the United States such as which school he attended, or where the applicant resided at any time during the 1980s. Mr. [REDACTED] claims that the applicant and his father lived with him when they first came to the United States in 1981, however, he provided no specific address where they lived, or how long they lived with him. [REDACTED] provided no documentation of his own identity and residence in the United States during the 1980s. For someone claiming to be the applicant's relative, [REDACTED]'s letter is not accompanied by documentary evidence – such as photographs, letters, and the like – demonstrating his personal relationship with the applicant in the United States during the 1980s. For the reasons discussed above, the notarized letter has limited probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of filing the application.

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.

Based upon the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before

January 1, 1982 and 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.