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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-098-23464

Office: NEW YORK

Date: **OCT 28 2009**

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 "Perry Rhew".

Perry Rhew  
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, and 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States until he or his parent filed or attempted to file the application for temporary resident status.

On appeal, counsel for the applicant asserts that the director failed to evaluate all the submitted evidence and further contends that the applicant has submitted sufficient credible evidence to meet his burden of proof.

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)(1) 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). 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, "[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.

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 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 meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982, and has continuously resided in the United States throughout the requisite period.

As evidence of his continuous residence in the United States throughout the requisite period, the applicant submitted letters from Hoosier Courts Cooperative Nursery School, University Elementary School, and Boys & Girls Club of Bloomington. He also provided a doctor's report and various pictures claimed to be taken in the United States between 1983 and 1988.

The letter from Hoosier Courts Cooperative Nursery School states that the applicant and his siblings, [REDACTED] and [REDACTED] attended the school from 1980 to 1986. It further states that the applicant participated in after-school activities. This evidence is in direct conflict with the applicant's asylum application and statement during his asylum interview in February 2001 where he stated that he was born and grew up in Congo until 1983, when he moved to France. The applicant additionally claimed during that interview that he lived in France for two years before moving to the United States in 1985.<sup>1</sup> It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits

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<sup>1</sup> The asylum interviewer noted that the applicant along with his mother, brother, and sister, left the United States and returned to Congo in 1987.

competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The letter will be given nominal weight.

The letter from University Elementary School verifies that the applicant and his brother, [REDACTED] were students at the University Elementary School from 1985 to 1987. The applicant provided two class pictures to corroborate the letter. The AAO finds that the letter combined with the pictures is credible and probative as evidence of the applicant's residence and physical presence in the United States between 1985 and 1987.

[REDACTED] claims in her letter that the applicant was a member of the Boys & Girls Club of Bloomington from 1985 to 1987, while he was in 3<sup>rd</sup> and 4<sup>th</sup> grade. [REDACTED], states in her letter that the applicant was a member of the Boys Club of Bloomington between 1985 and 1988. To be considered credible and probative, letters from social organizations must contain inclusive dates of the applicant's membership, the address or addresses where the applicant resided during his or her membership period, how the authors of the letters know the applicant, and where they acquire the information relating to his membership in their organizations. 8 C.F.R. § 245a.2(d)(3)(v). Neither [REDACTED] nor [REDACTED] provides these details in her letter. The letters will be given nominal weight.

The doctor's report is illegible and has no probative value as evidence of the applicant's residence in the United States during the requisite period. The report contains no date of birth or name of the patient, and no name, address or telephone number of the applicant's parent or guardian.

With respect to the photographs, other than the applicant's claim that the pictures were taken in the United States between 1983 and 1988, these pictures reveal no information when or where they were taken. The pictures contain no label, date, or significant landmark. They are not probative as evidence of the applicant's residence in the United States since before January 1, 1982 and throughout the requisite period.

Taken individually and collectively, the evidence presented shows that the applicant resided in the United States from 1985 to 1987; however, in light of other evidence in the record, it does not establish that the applicant entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until the date he or his parent filed or attempted to file the application for temporary resident status during the legalization period in 1987-1988.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record 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 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 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.