

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Lg



FILE: [REDACTED]
MSC-05-138-10796

Office: NEW YORK

Date: DEC 11 2007

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:

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 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, on February 15, 2005. 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, specifically noting that only two affidavits were submitted in support of the applicant's claim. The director denied the application as 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.

The director's decision also noted that the applicant had failed to provide any tangible evidence or credible documentation in support of his claim, such as receipts, medical invoices, school records, utility bills, pay stubs or other such documentation issued during the statutory time frame. The director further noted that the applicant was ineligible for legalization due to his absence from the United States from December of 1987 until March 21, 1998, stating that that absence represents a clear break in residency as it is far in excess of a single absence of 45 days during the statutory period from January 1, 1982 until May 4, 1988.

On appeal, the applicant asserts that he resided in the United States as required and that the statement that he left the United States in December of 1987, and did not return until March 21, 1998, was a misrepresentation. The applicant did not submit any additional documentation.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

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 credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. 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 AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the decision regarding a requirement for such "tangible evidence" will be withdrawn. The AAO also notes that an applicant for temporary residence under the

CSS/Newman Settlement Agreements is not required to maintain residency for the “statutory period from January 1, 1982 until May 4, 1988;” that portion of the decision regarding residence will also be withdrawn. An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 applicant attempted to file a Form I-687 application or was caused not to timely file.

The issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

Here, the submitted evidence consists of two affidavits, which are not relevant, probative and credible. As for the applicant’s assertion on appeal that the director’s statement regarding his absence from the United States from 1987 until 1998 was a misrepresentation, the AAO finds that, as explained above, his absence during those years is not relevant to establishing eligibility for temporary residence under the CSS/Newman Settlement Agreements. It is clear from the record, however, that the applicant stated during his interview with U.S. Citizenship and Immigration Services on December 21, 2005, that he resided outside the United States during that time period.

Regarding residence in the United States during the requisite period, the record contains the following two signed and notarized statements:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1987, and that they met in line at [REDACTED] located in New York, where they were both present to apply for adjustment of status. The affiant also stated that he and the applicant have kept in touch with each other and that they visited with each other frequently. The statement is not accompanied by any identification or evidence that the affiant resided in the United States during the requisite period and it lacks any details of his relationship with the applicant. Moreover, it refers only to a time period since 1986, with no mention of the applicant’s entry into or residence in the United States before that time. The affiant has failed to provide contact information. Because this affidavit is significantly lacking in detail and because it is not amenable to verification, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since approximately 1982, and that they first met at [REDACTED] located in New York, where many Africans used to meet. The affiant also stated that he and the applicant have kept in touch with each other and have visited with each other frequently. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this affidavit. The affiant fails to specify the frequency and the circumstances under which they met since 1982. Because this affidavit is significantly lacking in detail it can be

accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The two affidavits, along with the applicant's own statements, comprise the only documentation provided by the applicant as evidence of his residence in the United States for the requisite period. This evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982, and resided in the United States for the requisite period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 paucity of credible supporting documentation and the applicant's reliance upon two affidavits, documents with minimal probative value, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the date he attempted to file a Form I-687 application, 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. Portions of the decision, noted *supra*, will be withdrawn. The appeal will be dismissed.

Finally, the record of proceedings reflects that on December 3, 2001, the applicant was arrested by the New York Police Department and subsequently charged with reckless driving in violation of New York State Vehicle and Traffic Law section 1212. On January 18, 2002, the applicant was convicted in the above noted case before the New York City Criminal Court of disorderly conduct in violation of New York Penal Law section 240.20 of the New York State Consolidated Laws. (Case number 20025X003696). While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have a misdemeanor conviction.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.