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FILE: [Redacted]  
MSC 05 316 11494

Office: BOSTON

Date: AUG 15 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.

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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to demonstrate that she continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reaffirmed previous statements made during a May 16, 1006 interview with CIS and submitted two additional affidavits.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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.

Even if the director has some doubt as to the truth, if the petitioner 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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with CIS in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

On November 17, 2005, in a Notice of Intent to Deny, the director stated that the applicant failed to provide sufficient evidence to establish applicant's residence in the United States during the statutory period. In response to the Notice of Intent to Deny, the applicant provided the following affidavits:

- A December 3, 2005 notarized letter from [REDACTED] who stated that she had known the applicant since 1980 when the applicant first came to the United States. [REDACTED] stated that the applicant has been a close family friend and was relied upon to take care of the affiant's elderly mother. She stated that the applicant is her tenant.
- A December 4, 2005 sworn statement by [REDACTED] who stated that she has known the applicant for 40 years and knew the applicant when she traveled to the United States in 1980. [REDACTED] stated that the applicant traveled to Ghana in 1988 and returned to the United States in 2000.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 12, 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 applicant showed her first address in the United States to be at [REDACTED], from June 1980 to July 1988. The applicant listed her second address in the United States as [REDACTED] from November 2000 to the date of the Form I-687 application. At part #16 of the Form I-687 application, the applicant indicated that she last came to the United States on November 18, 2000 on a tourist visa.

During a May 16, 2006 interview with CIS, the applicant testified to entering the United States in June 1980, by car, from Canada at upstate New York, without inspection. The applicant stated under oath that while she was in the United States she: 1) did not attend any schools; 2) never sought any medical attention; and, 3) was never arrested. The applicant further testified that she lived in the United States continuously from June 1980 until July 1988 whereupon she traveled back to Ghana and lived there until she returned to the United States in November 2000. On May 19, 2006, in a Notice of Decision, the director determined that the applicant failed to meet the burden of proof in establishing entry and continuous unlawful residency in the United States from before January 1, 1982.

On appeal, the applicant submitted two additional affidavits by previous affiants, [REDACTED] and [REDACTED]. The new affidavits contain similar statements to their previously submitted affidavits. Although both affiants indicated that the applicant had been in the United States since 1980, neither affidavit contained any dates of the applicant's residence during the statutory period, provided any detailed testimony regarding the applicant's time of entry into the United States, or confirmed the applicant's presence in the United States throughout the statutory time period.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1980-88 period. None of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The absence of sufficiently detailed and consistent 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 applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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.

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