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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: HARTFORD Date: MAY 21 2007
MSC 05 188 13337

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he 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, counsel for the applicant states that the applicant would like to present further evidence that he was in the country prior to January 1982, and that the applicant contends he was unaware of some of the information in his Form I-687 application.

An applicant for temporary residence 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 alien applying 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. § 1225a(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 alien 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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying 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, 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 including affidavits 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.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, 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 is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that the word "emergent" means "coming unexpectedly into being."

On his Form I-687, Application for Status as a Temporary Resident, the applicant claimed that he established a residence in the United States in 1981, and that he continuously resided in the United States from that date through May 4, 1988. In block #32, where absences from the United States were to be listed, he indicated that he was outside the United States from May 1985 to August 1985; from January 1989 to March 1989; from July 1993 to September 1993; from November 1994 to February 1995; from August 1996 to October 1996; from February 1998 to May 1998; from

January 1999 to April 1999; from November 2001 to February 2002; from July 2003 to September 2003; from April 2004 to May 2004; from June 2004 to August 2004; and from December 2004 to February 2005. The applicant indicated that these absences were for the purpose of family visits and business.

The applicant appeared at the Hartford, Connecticut, Citizenship and Immigration Services (CIS) office for his legalization interview on December 1, 2005. According to the notes of the interviewing officer, the applicant stated that he entered the United States from Mexico without inspection in June 1981. He stated that he lived in New York until 1985 when he returned to Ghana. He stated that he was in Ghana for three months and once again entered the United States without inspection. The applicant told the interviewing officer that he traveled back and forth between the United States and Naples, Italy, on business.

On December 9, 2005, the district director sent a notice to the applicant informing him of his intent to deny the application because the applicant was outside of the United States for over 180 days in the aggregate and his absence was not brief, casual, or innocent. The applicant, in response, stated that none of his trips outside the United States exceeded 180 days per year. He explained: "I used to take goods overseas to sell in Italy, and get clothes and other European goods to be sold in Ghana before bringing in U.S. some African products. It's seasonal and triangular trips that I was doing between 1985 and 2005."

The director denied the application because the applicant failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence in the United States from that date to the date he filed his Form I-687 application, April 6, 2005.

On appeal, counsel for the applicant stated that the applicant had additional evidence to submit to corroborate his claim of initial entry into the United States prior to January 1, 1982 and continuous residence in the United States from that date to May 4, 1988. To date, CIS has not received any additional evidence from counsel or from the applicant. Therefore, the record will be considered complete, as presently constituted.

The first issue to be determined in this proceeding is whether the applicant entered the United States prior to January 1, 1982, and resided continuously in the United States in unlawful status from that date through the date he attempted to file his Form I-687 application in the original application period of May 5, 1987 through May 4, 1988. The applicant's absences outside the United States after May 4, 1988, are not relevant to this proceeding. The applicant had only one absence outside the United States during the requisite period, the absence from May 1985 to August 1985, a period of approximately 90 days. Therefore, the district director's finding that the applicant was outside the United States for over 180 days in the aggregate is withdrawn. Nevertheless, the fact remains that the applicant was outside the United States for more than 45 days on a single trip during the requisite period.

As the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason."

The applicant indicated on the Form I-687 that his absence outside the United States from May 1985 to August 1985 was a family visit to Ghana. However, he has not claimed, or provided any evidence to establish, that his return to the United States from Ghana was delayed beyond the 45-day period by an emergent reason that came suddenly into being.

The applicant indicated on the Form I-687 that he has lived in the United States since 1981. At block #30, where applicants are instructed to list all residences in the United States, the applicant indicated that he lived at "[redacted] Bronx, New York," from 1981 to 1983 and at "[redacted] Bronx, New York," from 1984 to 1988. During his legalization interview the applicant told the interviewing officer that he entered the United States without inspection in June 1981 and lived in New York, New York, until he returned to Ghana in 1985. In support of the application, the applicant submitted an affidavit dated November 23, 2005, from [redacted] stating that he has known the applicant since 1981 and they lived together in the same neighborhood in New Jersey. This statement contradicts the applicant's statement on the application and during his legalization interview that he lived in New York from 1981 until 1985. The applicant has not provided any explanation for this discrepancy in his claimed place of residence.

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. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (BIA 1988).

The applicant also submitted an affidavit dated November 30, 2005, from [redacted] stating that the applicant lives at "[redacted] Meriden, Connecticut" and pays his rent regularly. The applicant indicated on the Form I-687 that he has lived at this address since 1999. The affidavit from [redacted] cannot be accepted as evidence of continuous residence in the United States because it relates to a period after the qualifying period from prior to January 1, 1982 through May 4, 1988.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the applicant's prolonged absence outside the United States in 1985, and to his failure to submit sufficient credible evidence to establish entry into the United States prior to January 1, 1982 and of his continuous residence from that date to the date he

attempted to file his Form I-687 application in the original legalization period, the applicant has not established continuous residence in the United States during the requisite period.

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