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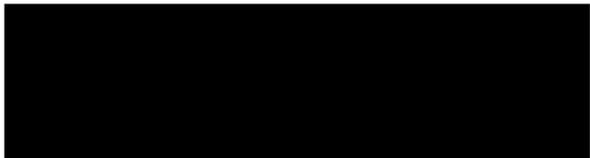
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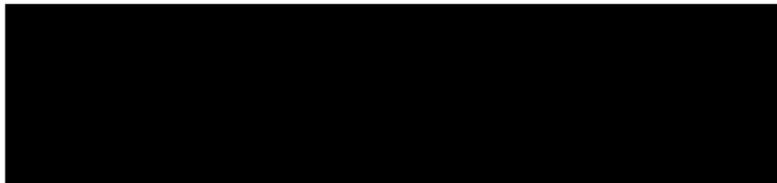
Office: HARTFORD

Date: **MAY 21 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:



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 denied the application, finding that the applicant had failed to establish continuous unlawful residence since before January 1, 1982 through the date his application was filed. 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.

On appeal, counsel for the applicant submits an affidavit attesting to the applicant's presence in the United States during the disputed period.

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 Act, 8 U.S.C. § 1255a(a)(2).

An applicant 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. § 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 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. *See* 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.

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 emergent means "coming unexpectedly into being."

At block 32 on his Form I-687, Application for Status as a Temporary Resident, where absences from the United States were to be listed, the applicant listed the following absences: May 1986 to August 1986; December 1988 to March 1989; May 1991 to July 1991; and, August 1998 to October 1998. At block 30, where applicants are instructed to list all residences in the United States since initial entry, the applicant listed four different addresses in Columbus, Ohio, Alexandria, Virginia, and East Hartford, Connecticut, but he did not provide any information regarding his claimed dates of residence at any of these addresses. At block 33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he was working in East Hartford, Connecticut, as a self-employed person, but he did not provide any information about the dates of his self-employment.

The applicant appeared for his legalization interview on December 6, 2005. According to the notes of the interviewing officer, the applicant stated that he and his father first entered the United States

from Canada without inspection on August 24, 1980. The applicant indicated that he and his father lived in Colorado for five years. The applicant told the interviewing officer that he lived in Georgia from 1986 to 1988, and then moved to Alexandria, Virginia, and subsequently to Connecticut in 1998. The applicant told the interviewing officer that he was outside the United States for three months in 1986; for two months in 1988; for two months in 1991; and for two months in 1998. The applicant explained that each of these absences was a trip to visit his family in Ghana, and each time he returned to the United States, he entered the United States without inspection from Canada.

On December 9, 2005, the district director issued a notice affording the applicant thirty days to submit evidence regarding his absences outside the United States. The applicant, in response, stated in a letter dated January 4, 2006, that his absences outside the United States were due to illness in his family. The applicant further stated, “[m]y ninety one year old father was ailing and for this reason I extended my stay based on his condition at a given time.”

The district director determined that the applicant’s absences outside the United States exceeded 45 days for a single trip and 180 days in the aggregate, and denied the application because the applicant failed to establish continuous residence in the United States during the requisite period.

On appeal, counsel for the applicant states that she is enclosing an affidavit from [REDACTED] stating that the applicant was in the United States during the disputed period. Counsel submits an affidavit from [REDACTED] stating that he first met the applicant and his father in Denver, Colorado, “in 1981 or 1982” while working as a counselor. [REDACTED] states that he saw the applicant professionally “a few times” and then lost touch with him until “a few years ago.”

The sole issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. His absences outside the United States after May 4, 1988, have no effect on his eligibility for temporary resident status. Therefore, the district director’s statement that the applicant is ineligible for temporary resident status because of his absences outside the United States after May 4, 1988, is hereby withdrawn.

As previously stated, the applicant did not provide any information on his application regarding his date of initial entry into the United States. The applicant claimed during his legalization interview that he first entered the United States without inspection in 1980 and had resided in the United States continuously since that time. He did not provide any explanation for his failure to list dates of residence or employment on his Form I-687 application.

The applicant indicated on his Form I-687 application that he was absent from the United States from May 1986 to August 1986, a period of three months, visiting his family in Ghana. In response to the Notice of Intent to Deny dated December 9, 2005, the applicant conceded that he was outside of the United States for more than 45 days, but stated that the reason for his extended stay in Ghana was illness in his family. He explained that his 91-year-old father was ailing and he extended his

stay in Ghana for that reason. It is noted that the applicant did not specify in his letter which absence he was referring to, or whether he was referring to all of his absences outside the United States. The applicant has not submitted any independent evidence to corroborate his claim that he extended his visit to Ghana in 1986 because his father was ill.

In the absence of any other information, it is concluded that the applicant was absent for more than 45 days on a single visit. 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 has explained that he extended his stay in Ghana because his 91-year-old father was ill. However, the applicant has not submitted any independent evidence to corroborate his explanation. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6).

The explanation put forth by the applicant indicates that he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. The applicant could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period.

In addition to the foregoing, there are discrepancies in the applicant's statements regarding his purported residence in the United States during the period in question. The applicant indicated on the application that he has lived in Columbus, Ohio, Alexandria, Virginia, and East Hartford, Connecticut. However, he told the interviewing officer that he and his father lived in Colorado "for 5 years" after his initial entry into the United States in 1980. The applicant told the interviewing officer that he lived in Georgia from 1986 to 1988, but he did not list any residence in Georgia on the Form I-687. On appeal, the applicant submitted an affidavit from [REDACTED] stating that he is a professional counselor and that the applicant was his client in Denver, Colorado, "back in 1981 or 1982." As previously stated, the applicant did not list a residence in Denver, Colorado on the Form I-687 application. The applicant has not provided any explanation for these discrepancies in his claimed dates and places of residence in the United States. These discrepancies raise serious questions of credibility regarding the applicant's claim of continuous residence in the United States during the requisite period.

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. (Comm. 1988).

The applicant has not submitted sufficient credible evidence to establish that he resided continuously in the United States during the requisite period.

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 absence, the applicant did not continuously reside in the United States for the requisite period. The applicant has not met his burden of proof.

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