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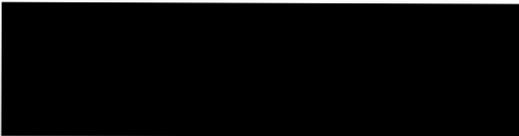
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U.S. Citizenship  
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FILE: MSC-05-316-12540

Office: Newark

Date: MAY 25 2007

IN RE: Applicant:



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. 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, Newark, 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 submitted additional corroborating evidence to demonstrate the applicant's continuous residence in the United States.

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 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. 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 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 he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988.

The applicant’s Form I-687, Application for Status as a Temporary Resident, indicates that he has resided in the United States since 1981. Part 30 of the application form requests the applicant to list all of his residences in the United States since his first entry. The applicant indicated that he resided at [REDACTED] Bronx, New York from October 1981 until July 1991. Part 33 of the application form requests the applicant to list his employment history since his entry into the United States. The applicant indicated that he was “self employed” as a courier in New York, NY from November 1981 until April 1985. The applicant also indicated that he was employed in the warehouse of P & Mag Inc., located in Pawtucket, Rhode Island. However, the applicant has failed to provide credible evidence to corroborate this purported residence and employment.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the

applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence. An applicant may also provide “any other relevant document” as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted three retail sales receipts, a raffle ticket stub, a circus ticket stub, and bus transfer ticket as evidence of his residence during the requisite period. However, these documents fail to state the applicant’s name or any other identifying information to corroborate their ownership. Therefore, these documents are not credible evidence of the applicant’s residence in the United States.

The applicant has submitted three documents entitled “Affidavit of Witness” to corroborate his residence in the United States during the requisite period. The weight to be given to affidavits depends on the totality of the circumstances. Affidavits are evaluated based on the affiant’s specific, personal knowledge of the applicant’s whereabouts during the time period in question, and documentation to verify the affiant’s credibility such as a copy of his/her identity document, contact information, and evidence that he/she was present in the United States during the statutory period.

The applicant submitted an affidavit from [REDACTED]. However, this affidavit was found to be not credible because it is internally inconsistent. This “fill in the blank” affidavit requests that the affiant first explain how he met the applicant and then to comment about his relationship with the applicant. In response to the first question, the [REDACTED] responded, “I went to a friend’s mothers [sic] funeral at the Bronx on the October 30<sup>th</sup> 1981. *That was the day I first met [REDACTED]. We then started communicating and visiting each other*” (emphasis added). In response to the second question, [REDACTED] provided inconsistent information. [REDACTED] responded, “[w]e been [sic] friends since childhood in Ghana, until I left in 1975.” This inconsistency undermines the credibility of the affiant, [REDACTED] and therefore his affidavit cannot be given any weight as corroborating evidence.

The applicant submitted an affidavit from [REDACTED] which states that he has known the applicant since November 1981. [REDACTED] completed a similar “fill in the blank” affidavit. [REDACTED]’s affidavit states, “[d]uring our many years of friendship here in the United States while I was a professor at the City College of the City University of New York, I found [REDACTED] to be very hard-working, honest and determined to be successful here in the United States. So far, he has proved me right. I am honored and glad to be his friend.” While this affidavit provides some details, it is vague in several respects. The affidavit fails to provide specific information on the affiant’s knowledge of the applicant’s continued residence in the United States since their first meeting in November 1981. Therefore, this affidavit does not establish by a preponderance of the evidence that the applicant has resided in the United States during the requisite period.

The applicant has submitted an affidavit from [REDACTED] which states that he has known the applicant since December 1981. [REDACTED] also completed a similar “fill in the blank” affidavit. [REDACTED]’s affidavit states, “[o]ur friendship grew through varrious [sic] meetings at

parties and funerals. Besides, my eldest brother was a popular [sic] Ghanaian musician and we 'look-alike'." Incidentally, [REDACTED] is a great fan of my brother's. Friendship developed that anytime I visit New York and New Jersey [sic] I put up with him and he equally do [sic] the same. I found him to be honest, trustworthy and hardworking gentleman." However, the applicant has failed to provide evidence that [REDACTED] was present in the United States during the requisite period. It should be noted that the applicant was given an opportunity to provide this evidence subsequent to his I-687 interview. The record shows that the District Office issued a written request for such evidence and allotted forty-five (45) days for the applicant to satisfy the request. However, as stated in the District Office final denial notice, the applicant failed to provide any additional documentation to corroborate the affidavit from [REDACTED]. Therefore, this affidavit does not establish by a preponderance of the evidence that the applicant has resided in the United States during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, "[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." Here, the submitted evidence is not relevant, probative, and credible. The absence of sufficiently detailed 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.

Even if the applicant had established that he continuously resided in the United States during the requisite period, he could be ineligible and inadmissible to adjust status to temporary resident based on a criminal conviction. An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p). An FBI report based upon the applicant's fingerprints reveals that on August 23, 1991, the applicant was arrested in Brooklyn and charged with the *Importation of Heroin* and/or the *Transportation of Heroin*. The FBI report indicates that on December 16, 1991, the applicant was convicted of this offense, under the alias John Mensah Plange, and sentenced to thirty-three (33) months in prison. The applicant has not provided a certified court disposition for this charge, therefore, the final conviction information is unknown. If the applicant was convicted of this offense, he would be ineligible for temporary resident status under Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). The applicant could furthermore be inadmissible for this offense under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for the violation of or a conspiracy or attempt to violate any law or regulation related to a controlled substance.

It should be noted that the applicant has failed to disclose this alleged arrest and conviction on his I-687 application. Part 37 of this application requests the applicant to answer "Yes" or "No" to the questions of "[h]ave you ever been arrested, cited or detained by any law enforcement officer . . ." and "[h]ave you ever been convicted of a crime or offense." The applicant answered "No" to both of these questions. The applicant signed this application by certifying under penalty of perjury that the information he provided is true and correct. If the applicant was arrested and/or convicted of this offense, he could also be inadmissible for willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C) provides, "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."

In conclusion, the applicant has 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.

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