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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA

Date: AUG 04 2008

MSC 05 334 10988

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Rn
Michael T. Kelly
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, Philadelphia, Pennsylvania. 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 August 30, 2005. The director issued a Notice of Intent to Deny (NOID) the application on November 17, 2005. Upon review of the record including the applicant's response to the NOID, the director denied the application on November 6, 2006. On appeal, counsel for the applicant provides a brief statement and submits two envelopes and three letters.

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 applicant attempted to file the application. 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 or attempting to file 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 during the original legalization application period of May 5, 1987 to May 4, 1988. 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).

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 issue in this proceeding is whether the applicant has furnished sufficient evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she had last entered the United States on February 9, 2002 with a visa. The applicant listed her address for the pertinent time period as: [REDACTED] Edison, New Jersey from April 1981 to June 2000. The applicant indicated she was self-employed as a hair braider at her home, [REDACTED] New Jersey, from April 1981 to June 2000. The applicant did not indicate that she was a member of any organization during the pertinent time period but did indicate she was a member of the Christ Apostolic Church in Pennsylvania from February 2002 to the date of the application. The applicant did not list any absences from the United States during the pertinent time period but did indicate that she left the United States to Nigeria in June 2000 for a family emergency and returned to the United States in February 2002.

The record contains a copy of the first page of the applicant's passport issued August 3, 2001 in Nigeria. The record also includes three affidavits submitted in response to the director's NOID:

- A December 8, 2005 affidavit signed by [REDACTED] Pennsylvania who indicates he first met the applicant in 1982 in Philadelphia at a church revival by [REDACTED]. The affiant indicates that the applicant became a good friend when she took "up the leadership of the church evangelist" and that the applicant "is one of the World Evangelist Group."
- An undated affidavit signed [REDACTED] of Norcross, Georgia who declares that he first met the applicant in 1983 at an African gathering in New York; and that the applicant has been a friend of his family since they met and that they have maintained a close relationship since then.
- A December 7, 2005 affidavit signed by [REDACTED] of Philadelphia, Pennsylvania who declares that she first met the applicant in 1980 in Nigeria at a party, that she has communicated with the applicant by phone since then, and that in 1986 she and the applicant met again for business. The affiant states that she has maintained a good

relationship with the applicant in the United States since 1986 and that she and the applicant go to the same church.

Upon review of the three affidavits submitted, the director determined that the affidavits were deficient and on November 6, 2006 determined that the record did not establish that the applicant was physically present in the United States prior to January 1, 1982 or is eligible as a class member.

On appeal, counsel for the applicant re-submits the three affidavits referenced above and submits three letters: a November 12, 1980 letter that does not include a clear image of the applicant's name and does not contain any marks or information identifying the address where the letter was sent; a November 10, 1983 letter from Nigeria that does not include a clear image of the applicant's name and does not contain any marks or information identifying the address where the letter was sent; and a February 1, 1985 letter that does not include the applicant's name and does not contain an address identifying where the letter was sent. Counsel also submitted two envelopes: an envelope addressed to the applicant at a Baptist Church in Philadelphia, Pennsylvania that bears an indiscernible postmark; and a second envelope addressed to the applicant at a Baptist Church in Philadelphia, Pennsylvania that bears a postmark of either 1983 or 1985. Counsel asserts that the applicant has submitted enough evidence to show that it is probably true that she was in the United States prior to January 1, 1982. Counsel contends that as the applicant was undocumented she did not leave a paper trail and worked odd jobs taking care of the elderly and working in the stores of her Nigerian friends. Counsel claims that Citizenship and Immigration Services (CIS) placed too high a burden on the applicant to prove her physical presence in the United States.

The AAO has reviewed the affidavits submitted and does not find them probative in this matter. The applicant stated on the Form I-687 that she resided in Edison, New Jersey from April 1981 to June 2000. Neither counsel nor the applicant explains or otherwise clarifies why the applicant was in Philadelphia in 1982 when the [REDACTED], Pennsylvania indicates he first met the applicant in 1982. The record does not contain any further information to substantiate that Reverend [REDACTED] had personal knowledge that the applicant lived in Edison, New Jersey as claimed by the applicant on the Form I-687. Neither does the record contain information explaining the circumstances and events of the applicant's initial meeting with [REDACTED] of Norcross, Georgia in 1983 in New York. In addition, [REDACTED] does not provide any further information to substantiate that he had personal knowledge of the applicant's residence in Edison, New Jersey from April 1981 to June 2000 as claimed on the applicant's Form I-687. Similarly, the affidavit of [REDACTED] does not contain any substantive evidence of the affiant's personal knowledge of the applicant's residence in Edison, New Jersey. Nor does the affiant identify the name and location of the church that the affiant and the applicant allegedly attended since 1986. These affidavits do not contain evidence corroborating the applicant's residence in Edison, New Jersey for the applicable time period. The affidavits suggest that Reverend [REDACTED] may have met the applicant at a one-time event, but do not contain detailed information of subsequent interactions with the applicant. Likewise, the affidavit of [REDACTED] does not contain sufficient detail to establish that the relationship between the affiant and the applicant. Further, none of the affidavits contain any specific information with regard to where the applicant was residing during the periods that the affidavits address. These affidavits do not have probative value.

The AAO has also reviewed the letters and envelopes submitted on appeal. The letters contain no identifying evidence linking the letters to the applicant or to her specific residence. The envelopes submitted although addressed to the applicant indicate the applicant received mail at a Baptist Church in Philadelphia, Pennsylvania, a location that the applicant does not identify as her residence in the United States. The letters and the envelopes do not establish the applicant's residence in the United States prior to January 1, 1981 for the requisite time period and have little, if any, probative value in this matter.

The AAO also notes counsel's statement that the applicant has worked taking care of the elderly and in the stores of her Nigerian friends. This information is inconsistent with the applicant's statement on the Form I-687 that she was self-employed as a hair braider out of her home in Edison, New Jersey. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

When viewed as a whole, the information in the record lacks credibility. The AAO finds that the documentation submitted lacks probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient documentation and the inconsistent information regarding the applicant's location in the United States comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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. The applicant has failed to meet her 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 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. The appeal will be dismissed.

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