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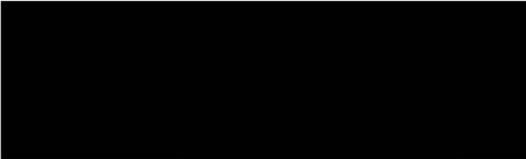
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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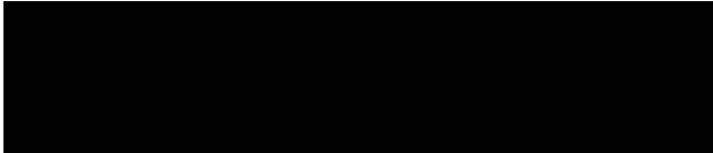
FILE: [REDACTED]
MSC 07 135 13808

Office: FAIRFAX , VIRGINIA (WAS) Date: **AUG 26 2008**

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. 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 "Robert P. 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 (director) in Fairfax, Virginia. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his entry before January 1, 1982 and continuous unlawful residence from before January 1, 1982 through May 4, 1988.

An applicant for temporary resident status under Section 245A of the Immigration and Nationality Act (The Act) 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). 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 the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means 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 period, 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).

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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a native of Ghana, who claims to have lived in the United States since April 1981, filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on February 12, 2007. As evidence of his continuous unlawful residence in the United States during the years 1981-1988 the applicant submitted the following evidence:

- A letter from [REDACTED], a resident of Alexandria, Virginia, dated January 29, 1992, stating that he drove the applicant to Canada on August 9, 1987, and that when they arrived at the port of entry in Buffalo, New York, they were allowed to drive through without inspection.
- An affidavit from [REDACTED], a resident of Alexandria, Virginia, dated March 9, 1992, stating that the applicant is his cousin, and that he knows that the

applicant resided at [REDACTED], Washington, DC, from April 1981 to the present (3/9/92).

- An affidavit from [REDACTED], a resident of Alexandria, Virginia, dated March 9, 1992 stating that the applicant is her friend, and that she knows that the applicant resided at [REDACTED], Washington, DC, from April 1981 to present (3/9/92).
- An affidavit from [REDACTED] a resident of Bowie, Maryland, dated March 8, 2003, stating that the applicant is his nephew, that the applicant stayed with him when he arrived from Ghana in 1981, and that he provided support to the applicant until he found employment.

On September 27, 2007, the director issued a Notice of Intent to Deny (NOID) the application, noting that the applicant failed to submit sufficient credible evidence of his continuous unlawful residence and physical presence in the United States during the statutory period, and to establish that he is admissible. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted the following additional documents:

A letter of employment from [REDACTED], vice president of Tysons Title Insurance Agency, Inc., in Woodbridge, Virginia, dated January 6, 1992, stating that the applicant was employed as a porter from May 1981 to July 1987, at an annual salary of \$9,000.00.

A letter of employment from [REDACTED] office manager of American Orthotic and Prosthetic Association, in Alexandria, Virginia, dated January 17, 1992, stating that the applicant was employed as a porter since October 1987, at an annual salary of \$12,000.00.

An affidavit from [REDACTED] a resident of Bowie, Maryland, dated October 15, 2007, stating that the applicant is his nephew, that on April 15, 1981, he picked the applicant up from the Greyhound Bus Station in Washington, DC, and drove him to the home of his older brother, [REDACTED], at [REDACTED], Washington, DC, where the applicant resided until February 1993, that although the applicant was not physically residing at his home in Bowie, he would pick him up every day from [REDACTED]'s house and take him to his own house to eat and helped him to look for employment, that the applicant and his family spent a lot of time together at social gatherings, and that in August 1987, the applicant left to visit Canada and returned in September 1987.

- An affidavit from [REDACTED] a resident of Washington, DC, dated October 15, 1992, stating that he is the president of The Sons and Daughters of Africa (SADA), that in December 1981 the applicant came to live with him at [REDACTED], Washington, DC, that the applicant became a member of SADA, that the applicant lived quietly in his room, and that the applicant briefly visited Canada in 1987 and returned to the United States.
- Photocopies of letter envelopes with postmarks dated in 1981 through 1989, from individuals in Ghana, addressed to the applicant at various addresses in the United States.

A photograph of the applicant.

On January 16, 2008, the director denied the application. The director noted that some of the letter envelopes submitted by the applicant as evidence of his residence in the United States in the 1980s, were addressed to him at addresses that the applicant never claimed as his residence in the United States. The director concluded that the applicant failed to submit credible evidence to establish that he entered the United States from before January 1, 1982, and resided continuously in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant in support of his claim. Counsel also asserts that the director's decision to deny the application on the basis that the correspondence which the applicant submitted as evidence of his continuous residence in the United States was addressed to the applicant at various addresses is contrary to the regulation and statute. Counsel submitted two affidavits from [REDACTED] and [REDACTED], dated February 2, 2008, to clarify the discrepancy relating to the applicant's residence in the United States in the 1980s.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The employment letters from [REDACTED] of Tysons Title Insurance Agency, Inc., dated January 6, 1992, and from [REDACTED] of America Orthotic and Prosthetic Association,

dated January 17, 1992, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the jobs during any of the years claimed. In addition, [REDACTED] did not indicate that he knew the applicant prior to 1987.

For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits from [REDACTED], and [REDACTED] dated March 9, 1992, and from [REDACTED] dated March 8, 2003, provide no information about the applicant except for an address he claims in the United States during the 1980s. The affiants provide no details about the applicant's life in the United States and his interaction with the affiants over the years. The letter from [REDACTED], dated January 29, 1992, does not indicate that he knew the applicant prior to 1987. None of the affidavits are accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED], dated March 8, 2003 and October 15, 2007, are inconsistent with the affidavit from [REDACTED] dated October 15, 2007, regarding the residence of the applicant when he first arrived in the United States. In his January 16, 2008 decision, the director noted this inconsistency in the applicant's residence. On appeal, counsel submitted two additional affidavits from [REDACTED] and [REDACTED] both dated February 3, 2008, in an attempt to reconcile the inconsistency. While the affiants indicated that the applicant resided at [REDACTED], Washington, DC, from April 1981, the information is contradicted by the letter envelopes submitted by the applicant.

The letter envelopes from Ghana with postmarks dated in 1981 through 1989 were addressed to the applicant at the following addresses:

- The envelopes postmarked on December 15, 1981, July 1982 and August 1984, were addressed to [REDACTED] Washington, DC, 20018;
- The envelope postmarked in 1985 was addressed to [REDACTED], Hyattsville, MD;

- The envelopes postmarked in 1987 and 1989, were addressed to [REDACTED] Lanham, MD.

The postmarks on the envelopes are clearly fraudulent because none of the stamps affixed to the envelopes were issued by the government of Ghana in the 1980s. The stamp of Mushrooms on the envelopes postmarked July 1982 and July 1985 was not issued by the government of Ghana until July 1993. The stamp of *Amorphophallus Flavovirens* on the envelope postmarked August 1984 was not issued until May 6, 1999. The stamp of *Xiphias Gladius* on the envelopes postmarked August 1987 and September 1989 appears to be part of the series of stamps issued by the government of Ghana on either August 18, 1998 or October 1, 2001. The stamp of the Cape Coast Castle on the envelope postmarked December 15, 1981 appears to be part of the series of stamps issued by the government of Ghana in 1991 or on April 3, 1995. Scott 2006 Standard Postage Stamp Catalogue, Vol. 3, pp. 250-264.

In addition, the addresses on some of the envelopes contradicted the information provided by the applicant on the Form I-687 filed on February 12, 2007. On the Form I-687 the applicant listed [REDACTED] Washington as his only residence in the 1980s. There is no listing of [REDACTED] Hyattsville, MD, or [REDACTED], Lanham, MD, as his residence in the 1980s or at any other time.

The AAO finds that the letter envelopes have no probative value as evidence of the applicant's presence and residence in the United States during the 1980s. Moreover, these fraudulent submissions cast doubt on the credibility and reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The photograph submitted by the applicant is of no probative value as evidence of the applicant's presence and residence in the United States in the 1980s because there is no indication on the photograph as to when and where it was taken.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for temporary residence status under the LIFE Act.

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