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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE: [REDACTED]  
MSC-06-076-12856

Office: CHICAGO

Date: **AUG 29 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:

[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.

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, Chicago. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director erred in finding that the applicant provided no evidence of residence in the United States before and after January 1, 1982. Counsel states that the director erred in failing to give any weight to the applicant's supporting documentation. Counsel asserts that the director erred in his finding that the applicant had not met his burden of proof where the applicant submitted more than a preponderance of the evidence. Counsel notes that the director abused his discretion in denying the application.

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 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).

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) 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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services on December 15, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from 1986 until 1994. The applicant’s failure to provide any residential address(es) in the United States prior to 1986 draws into question the credibility of his claim of continuous residence in the United States during the requisite period.

On January 11, 2006, the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded a period of 30 days to submit additional evidence in response to the NOID.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: 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.” 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In response to the NOID, the applicant submitted the following documentation:

- An affidavit from [REDACTED] dated February 4, 2006, entitled, “Personal Testimony for [REDACTED].” The affidavit states, “[t]his letter is to confirm that I have personally come to know the above individuals since November 1985 during which I noticed their innocent demeanor and respectful humility. I am also fondly impressed by their commitment to Church activities and their individual dedication and involvement in youth programs. . . .” This affidavit does not convey how [REDACTED] first met the applicant. Nor does it state that they first met in the United States. In addition, the affidavit does not provide any details on their relationship in the United States during the requisite period. While the affidavit indicates that the applicant is involved in a Church, it does not provide the name and location of the church. Notably, the applicant left blank part #31 of his application, where applicants are asked to list their affiliations with any organizations such as churches. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

A letter from [REDACTED] dated February 2, 2006, which provides, “I, [REDACTED] have known [REDACTED] since 1982. We met at a Ghanaian social gathering and we’ve been friends since. Currently, we both attend the same church The Church of Pentecost Chicago Central. . . .” The letter does not provide the location of the Ghanaian social gathering where [REDACTED] claims he first met the applicant. Therefore, it fails to establish that [REDACTED] first met the applicant in the United States. In addition, the letter does not illustrate their relationship in the United States during the requisite period. The letter states that they currently both attend the same church. However, it does not indicate whether they became involved in this church during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- A letter from [REDACTED], which provides, “. . . I have known [REDACTED] for some years. That she [sic] has and continues to be a faithful, honest, sincere, and kind hearted person. . . .” This letter fails to establish that [REDACTED] first met the applicant in the

United States during the requisite period. The letter is ambiguous as to the location and the year that [REDACTED] first became acquainted with the applicant. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The record shows that the applicant was interviewed for temporary resident status on May 1, 2007. During the applicant's interview, he submitted the following documentation:

- A letter from the [REDACTED] The Church of Pentecost (USA) Inc., Chicago District, dated April 27, 2007. This letter states, "[REDACTED] Appenteng is a member of the above church. He attends church service regularly and he is very instrumental in most of the church's activities. He is kind hearted, lovely, passionate and his great sense of humor has won the heart of most members in the church. . . ." As stated above, the applicant did not list his affiliations with any churches on his Form I-687 application. Moreover, the letter fails to indicate that the applicant was a member of this church during the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations from churches should show the applicant's inclusive dates of membership and state the address(es) where the applicant resided during the membership period. This letter fails to comply with these regulatory guidelines. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Another statement from [REDACTED] dated April 29, 2007. This affidavit provides, "[e]ver since I met [REDACTED] in the early eighties he has been a wonderful young man to me and my family. Whenever we organize any function [REDACTED] is there to render his services. . . ." This affidavit does not overcome the deficiencies in [REDACTED] previous statement. The affidavit fails to establish the location of [REDACTED] first meeting with the applicant. There is no indication that they first became acquainted in the United States. In addition, the letter does not establish the frequency and type of contact they maintained during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

Another statement from [REDACTED] notarized on April 29, 2007. This affidavit provides, ". . . I have known [REDACTED] for more than twenty years. That he has and continuous to be a faithful, honest, sincere, and kind hearted person. . . ." This affidavit does not overcome the deficiencies in [REDACTED] previous statement. The affidavit fails to establish the location of where [REDACTED] first met the applicant. There is no indication that they first met in the United States. The affidavit also fails to state the year that they first met. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On May 4, 2007, the director issued a denial notice to the applicant. In denying the application, the director found that the applicant's documentary evidence fails to establish by a

preponderance of the evidence that he meets the requirements for status as a temporary resident under Section 245A of the Act. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, counsel asserts that the director erred in finding that the applicant provided no evidence of residence in the United States before and after January 1, 1982. Counsel states that the director erred in failing to give any weight to the applicant's supporting documentation. Counsel asserts that the director erred in his finding that the applicant had not met his burden of proof where the applicant submitted more than a preponderance of the evidence. Counsel notes that the director abused his discretion in denying the application. Counsel indicated on the appeal notice, dated June 1, 2007, that he would submit a brief within 30 calendar days. However, counsel failed to file a brief and/or any additional evidence within this time period. On July 1, 2008, the AAO sent a notice to counsel requesting a copy of these documents. As of the date of this decision, counsel has not responded to this request.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he continuously resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period statements that are without any probative value. As discussed, these statements fail to establish that the authors first met the applicant in the United States during the requisite period. On appeal, the applicant failed to submit any other documentary evidence in support of his application. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's evidence is without any probative value it is not sufficient to meet his burden of proof in this proceeding.

In this case, 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 his 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. Given the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.