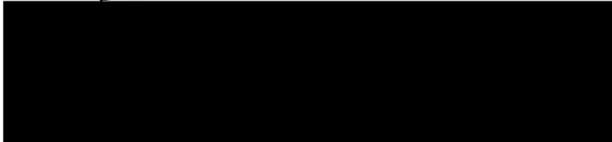


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L1

FILE:

MSC-06-101-19574

Office: NATIONAL BENEFITS CENTER

Date: FEB 06 2008

IN RE:

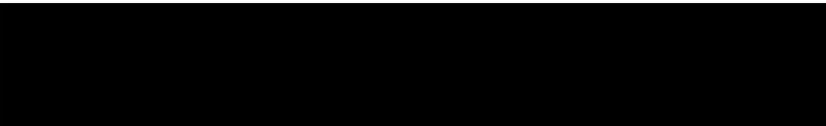
Applicant:



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 Director, National Benefits Center. 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 January 9, 2006. 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 for reasons detailed in the decision and in the Notice of Intent to Deny (NOID) and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel states that the director erred in denying the I-687 application because he failed to indicate why the affidavits submitted were unacceptable. Counsel further states that the decision was not in accordance with U.S. Citizenship and Immigration Services (CIS) rules that indicate that affidavits alone can be used to substantiate the applicant's presence in the United States. The applicant does not submit any evidence on appeal.

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)(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. See CSS Settlement Agreement, paragraph 11 at page 6, and 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.* 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 or she] resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two affidavits dated April 27, 2006 and May 9, 2006, respectively. The first affidavit was from [REDACTED] in which she stated that she entered the United States in April of 1982. She further stated that she and the applicant would meet monthly at the Associations of Ghanaians in New York, spoke frequently on the phone, and attended other cultural activities within the Ghanaian community. The affiant submitted copies of her United States passport, her child's 1988 birth certificate issued by the City of New York, a certificate of completion issued to the affiant from A.B.C. Training Center, Inc. and dated November of 1982, and a letter from the Social Security Administration addressed to the applicant and dated November 16, 1998 indicating that she had earned income in the United States every year since 1984. Here, the affiant stated that she entered the United States in April of 1982, and therefore, cannot attest to the applicant's presence in the country prior to January 1, 1982.

The second affidavit was from [REDACTED] in which she stated that she and the applicant would meet at the Apostolic Church in Manhattan, New York, that they spoke frequently over the phone with each other, and that they attended social functions together. The affiant submitted a copy of her child's birth certificate dated June 5, 1982 issued by the City of New York, Certificate of Naturalization issued to her on May 24, 2000, a petition for her name change issued March 24, 2000, a lease agreement dated May

13, 1982 and bearing the applicant's name as tenant, and a certificate of completion issued to the applicant on December 31, 1985, from People Care Inc. Here, the affiant does not specify when she met the applicant or how long their friendship has endured.

Both affidavits contain information that is inconsistent with the applicant's information on Form I-687, at part #31, where he did not indicate that he was a member of any church or affiliated with any group. Because these affidavits contain statements that conflict with what the applicant indicated on his Form I-687, and are significantly lacking in detail, doubt is cast on the assertions made. These affidavits can therefore be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the documentation submitted by the applicant was insufficient to overcome the grounds for denial.

Contrary to counsel's assertions, the applicant has not provided sufficient credible evidence of unlawful residence in the United States during the requisite period. The applicant submitted as evidence attestations from only two people, which, for the reasons noted above, lack probative value. Further, their statements with reference to the church and social groups conflict with evidence contained in the applicant's I-687 application. Therefore, the affidavits have minimal weight in establishing that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed 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. Given the applicant's contradictory statements on his application and his reliance upon documents with no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.