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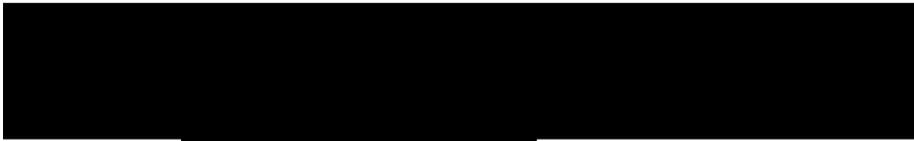
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: NEW YORK

Date:

FEB 14 2008

MSC 05-225-11352

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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 or rejected, 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, New York, and 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 as 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.

The director's decision also noted that the applicant was ineligible for legalization due to his absence from the United States from March of 1986 to February of 1987, stating that an absence from the country of approximately 300 days was not "brief, casual, and innocent."

On appeal, the applicant states that he was absent from the United States on several occasions, but was only illegally absent from the country once. The applicant further states that he left the United States in March of 1986 due to the death of his mother-in-law, and that he returned in February of 1987. He also states that while traveling from his mother-in-law's funeral in Ghana, the automobile he was riding in was involved in a tragic accident that resulted in his sister's death and his back being broken causing his return to be delayed. 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 Immigration and Nationality Act (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).

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 CSS Settlement Agreement paragraph 11 at page 6, and the 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

Here, the submitted evidence is not relevant, probative and credible.

The record of proceedings shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on May 13, 2005. The applicant indicated at part # 32 of the I-687 application where absences from the United States were to be listed, the applicant indicated that he left the United States and traveled to Ghana for a "family trip" from March of 1986 to February of 1987. The applicant indicated during his interview with an immigration officer on March 27, 2006, and in response to the Director's Notice of Intent to Deny dated November 28, 2005, that he traveled from the United States to Ghana in 1986 and returned in 1987. The applicant further explained in response to the NOID that he traveled to Ghana to attend his mother-in-law's funeral and returned to the United States when he did due to an unanticipated traffic accident that resulted in his sister's death and his back being broken.

The applicant filed the following documents in support of his claim that he resided continuously in the United States from prior to January 1, 1982 through the date of filing:

- An affidavit from [REDACTED] in which she stated that she first met the applicant through her nephew at a car wash in June of 1981, and that they have remained friends.
- An affidavit from [REDACTED] in which she stated that she met the applicant at his mother-in-law's funeral in New York in 1987, and that she met him earlier in 1981. The affiant also lists the applicant's addresses since 1985.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since March of 1986, and that he has known the applicant for over 19 years.
- An affidavit from [REDACTED] in which she stated that she met the applicant in New York in 1981, and that they later met in 1987. The affiant also lists the applicant's addresses since 1985.
- A letter from [REDACTED] of Eagles Nest Chapel, Brooklyn, New York, in which he stated that the applicant has been a member of the church since July of 1981.
- A letter from [REDACTED] of Asenteman Association of the United States of America, Inc. in which he stated that the applicant has been a member of the organization since January of 1982, and served as the organization's secretary from 1982 to 1984.

On appeal, the applicant reasserts his claim of eligibility for temporary residence status. The affidavits submitted by the applicant are not credible and fail to substantiate the applicant's claim of residence in the United States since prior to January 1, 1982. The applicant claims that he attended his mother-in-law's funeral in Ghana, however [REDACTED] states in her affidavit that she met the applicant at his mother-in-law's funeral in New York in 1987. It is also noted that the statements made by [REDACTED] of Eagles Nest Chapel and [REDACTED] of Asenteman Association of the United States of America, Inc., are inconsistent with the applicant's information on Form I-687, at part #31 where when requested to list all his affiliations or associations with churches, clubs, or associations he did not specify any. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. The applicant has not provided any plausible explanation for these inconsistencies. Neither has he provided any independent documentary evidence to substantiate his claim of brief, casual, and innocent absence from the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, it cannot be concluded that the applicant resided continuously or was continuously physically present in the United States for the requisite periods.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the applicant's prolonged absence, the AAO concludes that the applicant did not continuously reside in the United States for the requisite period.

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