

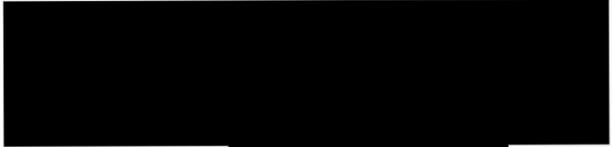
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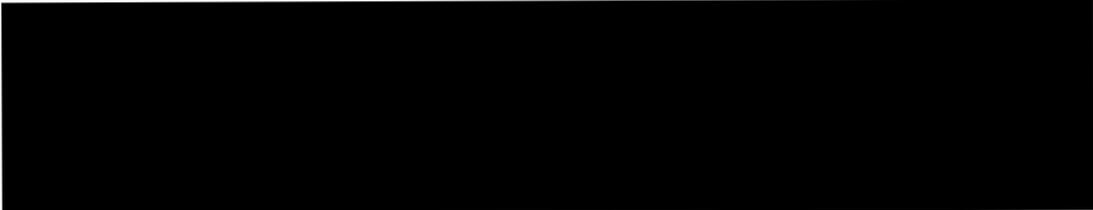
Date: JAN 29 2008

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.

A handwritten signature in black ink, appearing to read "D. King" or similar, with a long horizontal stroke extending to the right.

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 Acting District Director, Boston, and that 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 July 1, 2005. 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. Specifically, the director determined that the applicant failed to establish that he was residing in the United States in an unlawful status prior to January 1, 1982, as none of the evidence submitted supported the applicant's claim of entry to the United States in 1981. The director further noted that the applicant stated during his interview that the applicant was absent from the United States for more than two months in 1986. The director cited to the regulation at 8 C.F.R. § 245a.2(h)(1)(i) which states that an applicant cannot be regarded to have resided continuously in the United States if any single absence from the United States during the requisite period exceeded 45 days. 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.

On appeal, counsel for the applicant asserts: (1) that the director erred in determining that the applicant did not submit sufficient evidence to support his claim that he entered the United States prior to 1982; (2) that the director erred when determining that the applicant's absence from the United States from July to October 1986 constituted a break in his continuous residence; and (3) that Citizenship and Immigration Services (CIS) committed a procedural error by not issuing a Notice of Intent to Deny (NOID) the application to allow the applicant to explain any perceived deficiency in the evidence submitted. The applicant, through counsel, submits a brief and extensive new evidence in support of the appeal.

As a preliminary matter, the AAO will address counsel's assertion that the director was required to issue a Notice of Intent to Deny (NOID) pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. Accordingly, the director found that the applicant had established that he was "front-desked" or discouraged from filing his application for legalization at some point during the original legalization period. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

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).

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 from May 8, 1987 to May 7, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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).

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 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 credible evidence to demonstrate that he continuously resided in the United States in an unlawful status for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 1, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he has lived at the following addresses: [REDACTED] Bronx, New York; [REDACTED] Parlin, New Jersey; and [REDACTED] Worcester, Massachusetts. The applicant indicated the latter address as his current address at the time of filing, but did not indicate his dates of residence in New Jersey or New York. At part #32, where the applicant was requested to list all of his absences from the United States since January 1, 1982, he showed a total of four absences to visit family in Ghana. The only absence listed that falls within the requisite period was from July 1986 to October 1986. At part #33 of his application, where the applicant was asked to list his employment since entering the United States, he showed that he is or was self-employed in Worcester, and listed his occupation as "Business." The applicant did not associate any dates with this employment.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted a copy of the biographical page of his Ghanaian passport as proof of his identity, but did not provide evidence to support his claim of continuous residence in the United States for the duration of the requisite period.

The applicant was scheduled to appear for an interview with a CIS officer on January 9, 2006. The appointment notice advised him that he was to bring any and all documentation which could establish his eligibility for the benefit sought. During his interview, the applicant stated under oath that he entered the United States in 1981 and remained in the United States until July 1986, when he returned to Ghana for a visit lasting more than two months, returning in October 1986.

The applicant submitted the following documentation at the time of his interview:

1. A letter dated December 4, 2005 from [REDACTED], a representative of Medical and Health Research Association of New York City, Inc. in Brooklyn, New York. [REDACTED] stated that

according to her organization's records, the applicant had served as a proxy for an [REDACTED] from August 9, 1991 to May 28, 1995.

2. A letter dated December 9, 2005 from [REDACTED], a resident of Brooklyn, New York, who stated that the applicant worked for him from March 30, 1990 to April 12, 1992, providing health care services for his father. It is noted that the applicant indicated no such employment on his Form I-687 application.
3. A letter dated December 27, 2005 from [REDACTED] of Power House Revival Ministry in Parlin, New Jersey. [REDACTED] stated that he has known the applicant for four years and that he was one of the founding members of the ministry.
4. A letter dated December 24, 2005 from [REDACTED] District Pastor the Church of Pentecost (USA Inc.), Worcester Central Assembly, who describes the applicant as a reliable team member and active participant in church activities.

It is noted that none of these letters referenced the applicant's residence in the United States during the requisite period, and therefore, they cannot be considered relevant evidence for the purpose of establishing the applicant's claim of continuous residence in the United States during that period.

5. A form-letter "affidavit of attestation" from [REDACTED], a resident of Pawtucket, Rhode Island, who stated that she has personally known the applicant as a friend of her family since 1982. She stated that the applicant always showed good moral character.
6. A form-letter "affidavit of attestation" from [REDACTED], a resident of Carteret, New Jersey, who stated that she has known the applicant as a friend to her "formal husband" and herself since 1982. She stated that the applicant attended the naming ceremony of her child in 1988, and attested to his "exemplary moral character."

These two affidavits are not accompanied by proof of identification for the affiants and they lack any details that would lend credibility to an alleged 23-year relationship with the applicant. Neither affiant states when, where or under what circumstances they first met the applicant, or even if they met him in the United States. Notably, neither applicant provides any verifiable information such as the applicant's address(es) of residence during the requisite period. Neither affiant states how often they had contact with the applicant during the requisite period, nor do they identify where they themselves lived during the requisite period. Although [REDACTED] states that the applicant attended the naming ceremony of her child in 1988, she does not indicate where this ceremony took place or identify any other occasion on which she saw the applicant. Furthermore, neither affiant corroborates the applicant's claim that he has resided in the United States since 1981. Because of their significant lack of detail, these affidavits can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

Finally, the applicant submitted an original, handwritten letter dated September 19, 1982, along with an original, postmarked envelope from Ghana addressed to him at [REDACTED] in Bronx, New York. The envelope is postmarked September 22, 1982.

The director denied the application on January 25, 2006. In denying the application, the director determined that the applicant had failed to demonstrate that he was residing in the United States in an unlawful status since prior to January 1, 1982. The director observed that most of the individuals who provided affidavits on the applicant's behalf had only a very recent relationship with the applicant, and that none of the affiants indicated that the applicant was present in the United States prior to 1982.

The director also observed that the applicant testified that he returned to Ghana for a visit last more than two months from July 1986 to October 1986. The director cited to 8 C.F.R. § 245a.2(h)(1)(i),¹ which provides that an applicant for temporary resident status shall be regarded as having resided continuously in the United States if no single absence from the United States during the requisite period has exceeded forty-five days unless the applicant can establish that, due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Counsel for the applicant filed a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act, and supporting documentation on February 28, 2005. At that time, the applicant submitted the following additional evidence in support of his claim that he was present in the United States prior to 1982:

1. A copy of an envelope addressed to the applicant at his Bronx, New York address which bears a partially illegible postmark with a date in 1981.
2. A copy of an affidavit from [REDACTED] executed on February 20, 2006. [REDACTED] states that he met the applicant at a church service in Bronx, New York in August 1981, and states that he knows the applicant came to the United States before 1981 "because of the fact that we had met on several times." He indicated that he met the applicant at a church in the Bronx "at different times." He indicates that he has lived and worked in Massachusetts since 1975. Although not required to do so, Mr. [REDACTED] provides a copy of the biographical page of his U.S. passport as proof of his identity.
3. A copy of an affidavit from [REDACTED] executed on February 20, 2006. [REDACTED] states that he met the applicant at a "summer picnic" in Bronx, New York in November 1981. He indicates that after the picnic, he and the applicant started calling each other and visited a few times. He states that he currently lives in Worcester, Massachusetts, that he lived in Darlington, South Carolina when the applicant moved to the United States, that he lived in Michigan from January 1982 to May 1988, and that he worked in Warn, Michigan from 1971 to 1999. [REDACTED] provided a copy of his birth certificates as evidence of his identity.

¹ It is noted that the director incorrectly cited this provision as "8 C.F.R. § 245a.2(6)(i)." This error, while regrettable, is found to be harmless.

4. An affidavit from [REDACTED], executed on February 20, 2006. [REDACTED] states that he met the applicant in October 1981 "at a funeral gathering" at a Presbyterian Church in Bronx, New York. Mr. [REDACTED] indicates that he has resided in Worcester, Massachusetts since the applicant moved to the United States. [REDACTED] provided a copy of his U.S. Certificate of Naturalization as proof of his identity.

While [REDACTED] and [REDACTED] all claim to have met the applicant in New York over a four-month span in 1981, it is notable that none of the affiants lived in, or even near, New York City at that time. For example, it seems unlikely that [REDACTED], a resident of Massachusetts would regularly attend church services in New York City. None of them state that the applicant was residing in New York at the time they met him. None of the affiants state with any specificity where they first met the applicant (i.e., at which church, whose funeral, or whose picnic), how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which the applicant was residing at that time. The lack of detail regarding the events and circumstances of the applicant's residence raises questions as to whether the affiants have a bona fide relationship with the applicant. For these reasons, these three affidavits have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

Counsel for the applicant submitted a brief and additional evidence in support of the appeal on March 28, 2006. The applicant submits an affidavit in which he states that he first came to the United States in July 1981, and that he lived in New York from 1981 to 2001, in New Jersey, from November 2001 to June 2003, and presently lives in Massachusetts. He states that he traveled to Ghana in approximately July 1986 because his mother was very ill, hospitalized, and required full-time care. He indicates that he remained in Ghana longer than he intended because his father, brother and sister were not able to take responsibility for his mother's care. The applicant states that he recalls that he applied for legalization in October 1986 and never heard from immigration regarding his application.

The applicant submits the following additional evidence in support of his application:

- Affidavits from [REDACTED] and [REDACTED] all residents of Ghana. Counsel states that these persons "have personal knowledge that the applicant was no longer in Ghana in 1981 and that he was physically present in the U.S. in 1981." [REDACTED] stated that he saw the applicant off at the Kotoka International Airport in Ghana in 1981 and the applicant told him that he planned to enter the United States through Canada. [REDACTED] recalls that the applicant left Ghana in 1981 and that the applicant told him that he would enter the United States through Canada. [REDACTED] states that he knows the applicant came to the United States before 1982 because he called him on the telephone and told him. [REDACTED] states that he had not seen the applicant for some time after he left school in 1980, and the applicant's father informed him that the applicant had left for Canada and had entered the United States. [REDACTED] states that he knows the applicant came to the United States before 1982 because he inquired about him after he was absent from church for two weeks and was informed that he had traveled to the United States. He states that he never heard of the applicant or saw him again. [REDACTED] states that the applicant's brother informed him that the applicant came to the United States. [REDACTED] states that she knows the applicant came to the United States prior to 1982 because

he contacted her by telephone and told her that he was in the United States. It is noted that many of these witnesses claim to have obtained their information regarding the events to which they are attesting from the applicant himself, from his family members, or from unknown sources. They have not established, as claimed by counsel, they have direct, personal knowledge that the applicant was physically present in the United States in 1981, or that he continuously resided in the United States from 1981 through the duration of the requisite period. These statements can be given minimal probative value in establishing that the applicant entered the U.S. prior to January 1, 1982 and continuously resided in the United States thereafter.

- A new statement from [REDACTED] who states that she met the applicant on December 31, 1982, when he came to her house in New Jersey with her now ex-husband, who is a distant relative to the applicant. She states that the applicant became a family friend and was in contact with her former husband from 1982 to 1988 to the present. She stated that the applicant spent New Year's Eve with her family in 1984. The statement is not signed or notarized, but it is accompanied by proof of Ms. [REDACTED]'s identity and evidence of her residence in the United States during the requisite period. Ms. [REDACTED] does not state with any specificity how frequently she saw the applicant during the requisite period, nor does she provide verifiable information such as his address of residence in the United States during this time. She mentions only two specific occasions on which she saw the applicant, and she does not claim to have any personal knowledge regarding his residence in the United States prior to December 1982. For these reasons, this statement has limited probative value.
- An affidavit from [REDACTED], who states that he resides at [REDACTED] in Bronx, New York. He states that he knew the applicant as a neighbor and friend from 1983 to 1993 and that he and the applicant resided at [REDACTED] in Bronx, New York. It is noted that the applicant has never stated that he lived on [REDACTED] in Bronx, New York. [REDACTED] current address is the address where the applicant claims to have resided during the requisite period. Because the information in this affidavit is inconsistent with the applicant's own testimony, it is not credible. Furthermore, since [REDACTED] offers no information regarding the events and circumstances of the applicant's residence in the United States other than the address at which he claims they both resided, his statement is otherwise lacking in probative value.
- A declaration from the applicant's father, [REDACTED], who states that the applicant arrived in Ghana in July 1986 to visit his sick mother and returned to the United States in October 1986. He states that the applicant only intended to stay two weeks, but remained in Ghana because there was no one available to care for his mother.

In addition to the affidavits, the applicant has submitted photocopies of envelopes addressed to him at the 20 [REDACTED] address in Bronx, New York, and at his current address. The envelopes bear Ghanaian postmarks and postage stamps and have the following dates: August 13, 1981; May 17, 1982; December __, 1983; August 29, 1985; February __, 1986; August __, 1986; September 20, 1986; December 15, 1986; December 19, 1988; June 19, 19__; December 6, 1989; December 19, 19__; August 18, 1995; October 12, 2005; and October 16, 2005. The dates on seven of these envelopes fall within the requisite period. However, it is noted that at the time of the applicant's interview with a CIS officer on January 9, 2006, the

applicant presented only one original envelope. If the applicant had seven other envelopes available from the requisite period, it is unclear why he did not submit them with his application or bring them to his interview. Because the applicant did not submit the original envelopes, their probative value is diminished. Further, there remain significant gaps in time between the dates on the envelopes; with no evidence dated in 1984 or 1987. Even if the applicant had submitted original documents whose validity could be determined, the envelopes, combined with the affidavits that are deficient for the reasons discussed above, would be insufficient to meet the applicant's burden of proof.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 reliance upon documents that are not amenable to verification and that have minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he 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.

Finally, it is noted for the record that even if the applicant had otherwise submitted sufficient evidence to establish his continuous residence during the requisite period, the applicant has not established that his acknowledged absence from the United States of more than two months, from July 1986 to October 1986, would not constitute a break in his continuous residence pursuant to 8 C.F.R. § 245a.2(h)(1)(i). The record shows that the applicant indicated on his Form I-687 and during his interview with a CIS officer that he traveled to Ghana from July to October 1986 to "visit family." Prior to the denial of his application, the applicant never claimed that his return to the United States was delayed due to emergent reasons, such as an ill mother who required his full-time care for more than two months. The applicant has provided no evidence in support of his new claim other than his own testimony and that of his father, whose testimony is significantly lacking in detail. The applicant has therefore not provided sufficient evidence that, due to emergent reasons, he was unable to return to the United States within the time period allowed.

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