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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: BALTIMORE Date: JUN 09 2008
MSC-06-026-12808

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:

SELF REPRESENTED

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 District Director, Baltimore. 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 October 26, 2005. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant submitted conflicting evidence in support of her I-687 application and later, in response to the director's Notice of Intent to Deny, the applicant submitted two affidavits, which the director found to lack credibility. The director denied the application, finding that the applicant had not met her 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, the applicant claims that she is eligible for temporary resident status. She asserts that she initially lawfully entered the United States in December, 1981 with a valid non-immigrant visitor's visa set to expire within two weeks, thereby making her status unlawful as of January, 1982. The applicant admits that, contrary to the information contained in her Form I-687, she indeed departed the United States on three different occasions, but each departure was less than forty days duration. The applicant also explains the conflict between her statement at her interview that she never departed the United States between 1987 and 1999 and the 1996 issuance date on her Ghanaian passport by claiming that the passport was issued to her while she was resident in the United States. The record contains a copy of the applicant's passport that states that it was issued at Accra, Ghana, on August 6, 1996. The applicant does not address the lack of credibility of the two affidavits.

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 she resided in the United States for the duration of the requisite period. In this case, the applicant has provided no evidence other than her own statement and two affidavits, one from , dated November 30, 2005, and one from , dated November 30, 2005.

provides her New York address and telephone number and certifies that she has known the applicant "since the middle of December 1981 in this country at [sic] when she was introduced at Ghanaian Community Church Service together with other Ghanaians [sic] children and youth. claims to "have since then maintained a fairly good relationship with her."

The affidavit lacks any further detail regarding s claimed 24-year relationship with the applicant. The affidavit fails to note where or the applicant resided during the requisite period and fails to indicate any personal knowledge of the applicant's entry to the United States or how she lived and survived as a child in New York. provided no details of any relationship that would lend credibility to her affidavit. For these reasons, s affidavit can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The affidavit from is similar in nature. provides his New York address and phone number and certifies that he has known the applicant "since the middle of December, 1981 in this country." attests that he "used to attend informal Ghanaian political and social gathering with her [applicant] and other Ghanaians." The affidavit lacks any further detail regarding s claimed 24-year relationship with the applicant. The affidavit fails to note where or the applicant resided during the requisite period and fails to indicate any personal knowledge of the applicant's entry to the United States or how she lived and survived as a child in New York. provided no details of any relationship that would lend credibility to his affidavit. For these reasons, 's affidavit can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The remaining evidence in the record is comprised of the Form I-687 application and the applicant's statements. During her interview with a Citizenship and Immigration Services (CIS) officer on September 1, 2006, the applicant stated that she was born in Ghana on December 13, 1974, and that she arrived by plane from Ghana in December of 1981 at JFK airport. The immigration officer noted that the applicant was 7 years old at the time of her alleged entry and the applicant explained that she traveled with her uncle while her parents remained in Africa. Although the applicant stated at her interview that she was home schooled, she did not submit any documents to support this assertion, or any statement from an adult who would have been responsible for the applicant's education or health and welfare during the period she was a child. She also failed to provide any evidence from or about her uncle to indicate that her uncle had resided in the United States or that the applicant had resided with him. She failed to provide any evidence from any responsible adult regarding the circumstances of her travel to New York as a child and how she survived in New York during her childhood and throughout the requisite period.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. The two affidavits in the record are bereft of sufficient detail to support the applicant's claim of residence since 1981; and the applicant's assertions are not supported by any evidence. As noted above, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 and the applicant's reliance on two affidavits that have been found to have minimal probative

value, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she 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.