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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-239-12474

Office: NEW YORK

Date: JUN 30 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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. 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 May 27, 2005 (together, the I-687 Application). 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.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and additional documents. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 27, 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 listed his first address in the United States as [REDACTED], New York, New York, from April 1981 to July 1990. At part #33, he listed his only employment in the United States as "self-employed" and did not provide any dates during which he was self-

employed. At part #32, the applicant lists one absence from the United States. The applicant states that he visited Ghana from July 2002 to December 2002.

The applicant has provided several affidavits and letters; a copy of the applicant's passport issued on July 16, 2002 in Accra; a copy of the applicant's Form I-94 with a December 20, 2002 date of entry; and a copy of the applicant's visitor's visa issued on November 19, 2002 in Accra. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after April 1989 and is not probative of residence before that date. The following evidence relates to the requisite period:

A letter from [REDACTED], M.D., written on his letterhead but not notarized, and dated December 9, 2005. In her decision, the director stated that the declarant "does not appear to be a licensed doctor in the State of New York." On appeal, the applicant submitted a letter from [REDACTED] stating that he has been a "licensed physician in the State of New York since 1975." The record of proceeding contains a cancelled "Official New York State Prescription" slip with the declarant's information preprinted. In addition, according to the New York State Education Department Office of the Professions, has been a licensed physician in the State of New York since September 15, 1975.<sup>2</sup> The AAO withdraws the director's statements regarding the declarant's medical license. In his letter, the declarant states that the applicant was "first seen in [his] office for medical treatment on June 18, 1981" and that the applicant "still receives his medical treatment from this office." Although the declarant states that he treated the applicant on June 18, 1981, the declarant does not state how he remembers treating the applicant in 1981 or the source of the information. Also, the declarant does not state the type of medical treatment that the applicant received in 1981 or provide any additional dates when the applicant was treated. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

An unnotarized letter from [REDACTED]. The declarant states that he lives in Brooklyn, New York and states that he has known the applicant since 1981. Although the declarant states that he has known the applicant since 1981, the statement does not supply any details to lend credibility to a relationship of at least 24 years. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

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<sup>2</sup> See <http://www.nysed.gov>.

- A notarized affidavit from [REDACTED] dated March 8, 2006. The declarant states that he lives in Brooklyn, New York and that he has known the applicant “since 1990.” He states that he was introduced to the applicant by his aunt and the declarant hired the applicant to take care of his father from January 1991 to July 1998. The AAO notes that the declarant’s statement is inconsistent with the applicant’s employment information in the Form I-687. Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the relevant period for this application is from January 1, 1982 to May 4, 1988 and the declarant’s affidavit encompasses a time period after the relevant period. Given these deficiencies, this affidavit has no probative value in supporting the applicant’s claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated March 26, 2006. The declarant states that he lives in Brooklyn, New York and states that he has been acquainted with the applicant since 1982. The declarant states that he met the applicant “at Yankee Stadium on Sunday, April 25, 1982.” The declarant also states that during the summers, the applicant would go with him to “places like Coney Island Beach, Cyclone, and Coney Island Buffet” and that “later in the evening [they] chilled out at the small park in front of [REDACTED].” The declarant adds that at times, the applicant “will spend some days with [the declarant].” Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant’s claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated March 28, 2006. The declarant states that she lives in Brooklyn, New York and states that she has known the applicant since 1986. The declarant states that she met the applicant through her sister “at Africa House [on the] corner of Bedford and Snyder in Brooklyn on Saturday, November 15, 1986.” The declarant also states that she and the applicant have been “very good friends” and that she “invited him on many occasions to [her] former residence.” The declarant adds that she and the applicant attend the same church and have “participated in numerous Easter Conventions at many places such as Dallas, Newark, Connecticut, and New England.” She states that they have also participated in many Christmas Conventions at [REDACTED], Bronx, New York. Although the

declarant states that she has known the applicant since 1986, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter from Special Touch Home Care Services, Inc. dated February 27, 2006 and signed by [REDACTED] administrative assistant. Ms. [REDACTED] states that the applicant has been employed as a home health aid “since November 1, 2005.” Ms. [REDACTED] adds that the applicant earns “\$310.80 per week gross salary.” Although the statement is on company letterhead, it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant’s address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested). Furthermore, the relevant period for this application is from January 1, 1982 to May 4, 1988 and the declarant’s statement encompasses a time period after the relevant period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] The declarant indicates his address in Hillside, New Jersey and states that he has known the applicant since 1981. The declarant states that he met the applicant through a friend who lived in the applicant’s building. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated February 25, 2006. The declarant states that he lives in Brooklyn, New York and states that he has known the applicant since 1981. The declarant states that he met the applicant “on the train when [the declarant] was going to Bronx on July 6, 1981.” The declarant also states that he and the applicant have “remained good friends” and that the applicant has “become a member of [his] church.” The declarant adds that the applicant has been a member of his church, Church

of the Pentecost in Brooklyn, since 1995, and that he and the applicant “fellowship every Sunday.” Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant in the United States or how frequently he had contact with the applicant during the requisite period. He does not mention frequent contact with applicant until 1995, outside the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated March 2, 2006. The declarant states that she lives in Brooklyn, New York and states that she has known the applicant since 1981. The declarant states that she met the applicant through her brother “on Sunday, December 27, 1981 at [REDACTED] in Harlem.” The declarant also states that the applicant continues to be a “very good [friend].” Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant or how frequently she had contact with the applicant. Furthermore, although not required, there is no evidence in the record of proceeding that the declarant resided in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States through John F. Kennedy Airport in April 1981 without a passport or visa. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Furthermore, at part #32 of the Form I-687, the applicant listed an absence from the United States to Ghana from July 2002 to December 2002. However, in his March 13, 2006 interview, the applicant stated that he was married in Ghana in February 2002.<sup>3</sup> The Form I-687 and the applicant's statements during his interview provide inconsistent information regarding the applicant's time outside of the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted above, to meet his burden of proof, the applicant must

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<sup>3</sup> The applicant's passport of record was issued in Ghana on July 16, 2002 and the applicant entered the United States on a B-2 visa on December 20, 2002.

provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on November 15, 2005 and March 13, 2006. The director denied the application for temporary residence on July 10, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant provided a letter from [REDACTED] and documents supporting the presence of three affiants in the United States during different time periods. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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.