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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 287 11328

Office: NEW YORK

Date:

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IN RE: Applicant:

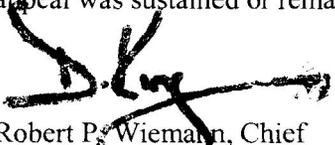
APPLICATION:

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. 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.


Robert P. Wieman, 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 appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status, and failed to demonstrate credibly that she was continuously physically present in the United States since November 6, 1986.

On appeal the applicant asserted, “[d]ue weight was not accorded the witness affidavits which testify to my presence in the United States since before January 1, 1982.”

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 was filed. Section 245A(a)(2) of the Immigration and Nationality Act (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 confirm 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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

As to continuous physical presence since November 6, 1986, section 245a(A)(3) of the Act, 8 U.S.C. § 1255a(a)(3) states, “[a]n alien shall not be considered to have failed to maintain continuous physical presence in the United States . . . by virtue of brief, casual, and innocent absences from the United States.”

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was

continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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 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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant submitted the instant Form I-687 application on July 14, 2005. At item 14 of that application the applicant stated that she had never previously applied for temporary residence as a Legalization applicant.

At item 30 of the application the applicant stated that she lived at [REDACTED], Bronx, New York; [REDACTED], Bronx, New York; and [REDACTED], Bronx, New York. The applicant indicated that she was then (July 14, 2005) living at the [REDACTED] address. However, she

did not indicate the dates during which she occupied those residences, although spaces are provided on the form for that specific purpose.

At item 32 of that application the applicant indicated that during the requisite period she visited her family in Ghana from June 1986 to September 1986. At item 33 the applicant indicated that she had not been employed since entering the United States.

The record contains:

- form affidavits dated December 8, 2005 and April 17, 2006 from
- a November 30, 2005 letter from [REDACTED], a church clerk;
- a form affidavit dated April 17, 2006 from [REDACTED]; and
- notes from the applicant's March 22, 2006 interview.

The record contains no other evidence pertinent to the applicant's continuous residence or continuous physical presence in the United States during the salient periods.

[REDACTED]'s December 8, 2005 affidavit states that the applicant lived at [REDACTED], Bronx, New York, at [REDACTED] Bronx, New York, and at [REDACTED] Bronx, New York. Mr. [REDACTED] did not state the dates of her residences at those addresses, although spaces were provided on the form affidavit for that specific purpose. Mr. [REDACTED] also stated, "[REDACTED] was my classmate in Ghana and anytime she comes to the USA she contacts, visits or lives with me for some time." Finally, Mr. [REDACTED] stated that the longest time he had not seen her was six months.

[REDACTED]'s other affidavit, dated April 17, 2006, stated,

[REDACTED] was my classmate in elementary school and a college mate back home in Ghana. When she first came to the US in 1981 she contacted me and used to visit me a lot of times. We also went to the same church and met for church services often. We also went functions like parties and funerals together. I remember somewhere in 1987, she visited Ghana and when she returned she again contacted me and we continued to go outings together until she moved to stay in my house with between 1989 – 2003.

In my previous not I wrote that [REDACTED] contacted, visited and stayed with me. What I meant is that when she was not living with me she used to spent sometimes with me. When she was staying in my house she never left the country.

[Errors in the original.]

Church clerk [REDACTED] November 30, 2005 letter states that the applicant has been a member of the North Bronx Seventh Day Adventist Church since early 1981.

In his April 17, 2006 form affidavit [REDACTED] stated that he met the applicant at a church function during 1981 and took her to church functions and then home to [REDACTED] regularly after that. Mr. [REDACTED]'s signature indicates that he is the same Mr. [REDACTED] who previously submitted a letter in his capacity as church clerk.

With the application, the applicant submitted none of the evidence pertinent to his residence and presence in the United States. On November 15, 2005, the Director, National Benefits Center, sent the applicant a Notice of Intent to Deny (NOID), requesting evidence pertinent to residence and physical presence.

In response, the applicant submitted the November 30, 2005 letter from church clerk [REDACTED] and the December 8, 2005 form affidavit of [REDACTED]

At her March 22, 2006 interview the applicant stated that she had entered the United States during July 1981 and then lived at the [REDACTED] address in the Bronx for eight years. She further stated that she left the United States only once between January 1, 1982 and May 4, 1988, more specifically, from June 1987 to July 1987, to visit her family in Ghana. The applicant stated that she worked in home health care, was paid in cash, and had no tax records. The applicant also stated that she had attempted to file a previous form I-687 during October 1987, but was prevented from doing so.

In a second NOID, dated March 22, 2006, the director noted that the applicant had submitted no documentary evidence of her asserted July 1981 entry into the United States. The director found that the statements from [REDACTED] and [REDACTED] are neither credible nor amenable to verification. The director stated that the applicant failed to submit evidence demonstrating her continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987, and that she had not demonstrated that she was continuously physically present in the United States from November 6, 1986 to the date she filed her application as required by section 245A(a)(3) of the Act and the regulation at 8 C.F.R. § 245a.2(b)(1). The director indicated that CIS intended, therefore, to find the applicant ineligible for temporary resident status pursuant to section 245A of the Act. The applicant was accorded 30 days to respond to that notice.

The director also noted that the applicant claimed, on the instant Form I-687, that she had never previously applied for Legalization, and claimed, at her March 22, 2006 interview, that she had attempted to submit a previous Form I-687 application during October of 1987, but was prevented from doing so. The director asserted that those two claims conflict. The director has raised a class membership issue that is not relevant to this proceeding.

In response, the applicant submitted the April 17, 2006 affidavit of [REDACTED] the April 17, 2006 affidavit of [REDACTED] and evidence that they had both been in the United States.

In the Notice of Decision, dated July 26, 2006, the director denied the application. The director found that the additional evidence the applicant submitted failed to overcome the grounds for denial as stated in the NOID. The director concluded that the applicant failed to sustain her burden of proof in the proceeding.

On appeal, counsel and the applicant submitted no new evidence, but urged that the evidence be reviewed.

One issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States during the requisite period.

Another issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she was continuously physically present in the United States since November 6, 1986, excepting brief, casual, and innocent absences, pursuant to section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

This office perceives a conflict between [REDACTED]'s statement in his December 8, 2005 affidavit that when the applicant comes to the United States she "contacts, visits or lives with [him]" for some time, and that he went without seeing her for six months at a time, and his subsequent statement, in his April 17, 2006 affidavit, that the applicant was in the United States constantly since 1981 and that they saw each other regularly.

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 application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The evidence the applicant submitted in support of her claims of residence and physical presence consists of two documents from [REDACTED] and two documents from [REDACTED]

Facts alleged in the documents from [REDACTED] are mutually contradictory, and the credibility of all of the documents submitted by [REDACTED] is therefore greatly diminished, along with the credibility of all of the other evidence in the record.

Further, at item 33 of the instant Form I-687 application, the applicant indicated that she had not been employed since entering the United States. At her March 22, 2006 interview, however, she indicated that she worked in home health care. This discrepancy also erodes the credibility of all of the assertions and evidence in the record. The evidence in the record, even those items that have not individually been contradicted elsewhere in the record, is unable to credibly support the applicant's assertions that she resided continuously in the United States and she was continuously physically present in the United States during the requisite periods.

Further still, on the Form I-687 at item 32 the applicant indicated that she was absent from the United States from June 1986 to September 1986. If this is so, then, pursuant to section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(h)(1), the application may not be approved, as an absence from any date during June 1986 to any date during September 1986 would exceed 45 days.

At her March 22, 2006 interview, the applicant amended her travel history, stating that her only absence from the United States from January 1, 1982 to May 4, 1988 was from June 1987 to July 1987, an absence that might or might not exceed 45 days. Pursuant to *Matter of Ho*, 19 I&N Dec. 582, however, this discrepancy must be reconciled with objective evidence. Absent that objective evidence, the applicant cannot demonstrate that she did not leave for in excess of 45 days as she stated in her application, and cannot, therefore, demonstrate eligibility.

Pursuant to *Matter of Ho, Id*, the discrepancies between the applicant's various assertions, and the discrepancies between those assertions and the evidence presented erode the credibility of all of the evidentiary documents in the record, rather than only those documents involved in the factual conflicts. Those documents cannot now be used to credibly support her assertions of residence and physical presence in the United States.

The applicant failed to sustain her burden of establishing continuous unlawful residence and continuous physical presence in the United States during the requisite periods as required under Section 245A(a)(3) of the Act. The applicant is, for both reasons, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on those bases, which have not been overcome on appeal.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. 8 C.F.R. § 245a.2(d)(5). Here, that burden has not been met. The appeal will be dismissed.

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