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

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[Redacted]

FILE:

[Redacted]

Office: ATLANTA

Date:

OCT 01 2008

MSC 05 244 15702

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:

[Redacted]

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 "R. Wiemann", written over a faint circular stamp.

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 Director, Atlanta. The matter is now before the Administrative Appeals Office 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 (the 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 she had continuously resided in the United States during the requisite period.

On appeal, counsel asserted that the director failed to accord adequate weight to the affidavits submitted and that the evidence in the record sufficiently supports the applicant's claim of residence in the United States during the requisite period.

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 (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).

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.

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, 431 (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.

On the instant Form I-687 application, which the applicant signed on May 18, 2005, the applicant stated that she entered the United States on April 3, 1980. The applicant was required to provide an exhaustive list of her residences in the United States since her first entry. The applicant did not complete that portion of the instant application. On a separate Form I-687, however, the applicant stated that she lived at \_\_\_\_\_ in Lawrenceville, Georgia, from April 1980 to September 1999.

The applicant was also required to provide an exhaustive list of all of her employment in the United States since January 1, 1982. The applicant stated that she was a self-employed hair braider from February 1981 to "Present." The applicant did not state where she plied that trade.

The applicant was required, on that application, to provide an exhaustive list of her absences from the United States since January 1, 1982. The applicant stated that she was absent from the United States during February 1983, when she went to Ghana pursuant to a family emergency, and during December 1986, when she visited Canada.

The pertinent evidence in the record is described below.

- The record contains an undated note from [REDACTED] of Atlanta, Georgia, who stated that she has known the applicant since 1982, when the applicant used to braid the affiant's hair. That note does not include [REDACTED]'s telephone number.
- The record contains photocopies of small portions of two passports a portion of a page of an original passport.

The portion of the passport page submitted shows that passport number [REDACTED] was issued to the applicant. A photocopied portion of another page of that passport shows a photograph of the applicant. The balance of that page and the entirety of the facing page were not included in that photocopy.

A portion of passport number 193200 shows that on December 6, 1982 a B-2 nonimmigrant visa was issued to the applicant in London. That passport further indicates that, on February 23, 1983 the applicant entered the United States at Boston, Massachusetts. This office notes that the applicant stated that she entered the United States on April 3, 1980 and did not leave the United States until February 1983. If that were true, then the applicant, who is from Ghana, would be unlikely to have had a visa issued to her in London on December 6, 1982.

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, 591-92 (BIA 1988). The entry on the applicant's passport casts doubt not only on the passport and the applicant's assertion that she was in the United States from April 3, 1980 to February 1983, but on all of the applicant's evidence and all of the applicant's assertions.

- The record contains a postcard that purports to have been mailed to the applicant in Yonkers, New York from Accra, Ghana, on January 11, 1982. This office notes that the applicant has never claimed to have lived in Yonkers, New York.
- The record contains a form affidavit, dated December 2, 2006, from [REDACTED] of New York, New York. The affiant stated that she has known the applicant, a friend of the affiant's mother and caretaker for the affiant's family, since November 1980. The affiant's telephone number was not provided on that affidavit.
- The record contains a form affidavit, dated November 28, 2006, from [REDACTED] of [REDACTED] Atlanta, Georgia. The affiant stated that she knows that the applicant has resided in the United States since April 1980 because the applicant was the affiant's mother's friend and braided the affiant's hair. She did not state where this took place. She further stated that she became the applicant's friend when the affiant moved to Georgia "many years ago," and that the affiant babysat the applicant's children when the applicant attended

college. This office notes that the affiant did not indicate that she ever lived in any state other than Georgia.

- The record contains a form affidavit, dated November 27, 2006, from [REDACTED] of Yonkers, New York, who stated that she knew the applicant from May 1982 to July 1982 in Yonkers, New York, and she was able to determine those dates because “[the applicant] visited [the affiant] on numeral occasions and picked her mails.” [Errors in the original.] The affiant’s telephone number was not included in that affidavit, and the applicant has never claimed to have lived in New York.
- The record contains a form affidavit, dated November 28, 2006, from [REDACTED] of Atlanta, Georgia. Mr. [REDACTED] stated that he knows the applicant has resided in the United States since October 1981 because “She hosted me as her brother on some occasions.”
- The record contains a notarized letter from [REDACTED] of Lawrenceville, Georgia. [REDACTED] stated that he has known the applicant since the summer of 1982 and that she worked for him as a housekeeper for several unspecified years. Although a notary affixed her stamp and signature on that letter, the notary did not indicate that she had ascertained the identity of the person who signed as [REDACTED] and did not indicate that he swore to the contents of the letter. The letter is not, therefore, an affidavit and will not be accorded the additional evidentiary value accorded to affidavits and other sworn statements. Further, that an ostensible notary public is unfamiliar with the form of a standard notary’s attestation raises the suspicion that the person who affixed that signature and seal is not, in fact, a notary.

The record contains no other evidence pertinent to the applicant’s residence in the United States during the salient period.

With her application the applicant submitted the undated note from [REDACTED] which is described above, but no other evidence pertinent to her claim of residence in the United States during the requisite period.

In a Notice of Intent to Deny (NOID), dated November 6, 2006, the director noted that the applicant submitted a single declaration in support of her claim of residence in the United States. The director stated that the applicant failed to submit evidence sufficient to demonstrate her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence. In response the applicant submitted the balance of the evidence described above.

In the Notice of Decision, dated February 26, 2007, the director noted that none of the applicant’s affiants had provided their telephone numbers. The director found that the affidavits were therefore insufficiently credible to support the applicant’s claim of residence in the United States during the requisite period.

On appeal, counsel submitted no additional evidence and asserted that the evidence of record is sufficient to demonstrate the applicant's eligibility.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

None of the affiants who provided the applicant's affidavits included their telephone numbers. That omission renders the affidavits less verifiable, and, therefore, less credible.

Further, the postcard that was ostensibly mailed to the applicant from Ghana gives an address in Yonkers, New York as her residence, and the November 27, 2006 form affidavit from [REDACTED] also indicates that the applicant lived in New York from May 1982 to July 1982. The applicant has never claimed to have lived in Yonkers, or anywhere in New York, or anywhere else in the United States outside of Georgia. On a Form I-687 in the record, the applicant claims to have lived in Lawrenceville, Georgia from April 1980 to September 1999.

Further still, one of the applicant's passports, which shows that she was issued a visa in London during December 1982, casts doubt on the applicant's assertion that she was in the United States from April 3, 1980 to February 1983, without interruption.

The various conflicts between the applicant's assertions and her evidence seriously damage the evidentiary value of all of the applicant's evidence, and the credibility of all of her assertions.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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