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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 199 10550

Office: NEW YORK

Date: **SEP 24 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. All documents have 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, 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 (together comprising the I-687 Application). The director noted that the applicant had been absent from the United States for over 45 days and had failed to establish that her return had been delayed due to an emergent reason. The director, therefore, concluded that the applicant had not resided continuously in the United States for the requisite period and was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant asserts that she did not state at her interview that her children were born in Ghana in 1983 and 1984, and that she never stated that she departed the United States in 1987 and returned in 1988. The applicant maintains that she was present in the United States for the duration of the requisite period, and thus, qualifies for temporary resident status in accordance with the terms of the settlement agreements.

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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the

United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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, "[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 or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. Here, the applicant has failed to meet this burden.

In this case, the applicant claimed on her Form I-687 application that she was born in Ghana on February 15, 1953. At part #30 of the Form I-687, where applicants are asked to list all residences in the United States since entry, the applicant stated that she resided at [REDACTED] from July 1981 to May 1987, and at [REDACTED] July 1987 to the present. At part #32 of the I-687 Application, which requires applicants to list all absences from the United States, the applicant indicated that she departed the United States on one occasion; she visited family in Ghana from June 2003 to December 2003. The applicant signed the Form I-687 under penalty of perjury on April 11, 2005.

The applicant also submitted photocopies of a passport issued on June 30, 2003 from the Republic of Ghana. The photocopies also include a United States visitor's visa issued on December 12, 2003, and a Form I-94 Departure Record indicating that the applicant entered the United States on December 24, 2003.

The applicant appeared for an interview before a U.S. Citizenship and Immigration Office adjudications officer on January 9, 2006. The officer's notes from the interview reveal that the applicant stated that she entered the United States in May 1981 with a visa and accompanied by several other members of her family. These included a brother whose name she could not recall. The applicant could not explain what happened to her passport, explaining that she was too young at the time of her entry and that it occurred too long ago for her to recall. The AAO notes that, according to the information on the Form I-687, the applicant would have been 28 years old at the time of her alleged initial entry into the United States. Consequently, the AAO finds the applicant's inability to explain what happened to her passport to be somewhat incredible. Likewise, the AAO finds the applicant's statement that she could not recall the name of her brother to be equally suspect.

The notes from the interview also indicate that the applicant stated that from 1981 to 1987 she resided at [REDACTED]. The applicant claimed that she left for Ghana at some point in 1987, but the applicant could not recall the month or the airline by which she traveled. Furthermore, the notes reveal that the applicant claimed she returned to the United States on December 24, 2003. The AAO notes that this statement corresponds with the Form I-94 Departure Record and visa contained in the applicant's passport. Ultimately, the interview notes indicate that the applicant has two children; a son born in Ghana on [REDACTED] and a daughter also born in Ghana on [REDACTED].

The applicant also submitted a notarized statement from [REDACTED] dated January 2, 2006. [REDACTED] who claims to reside in Ellenwood, GA, stated that he has known the applicant since 1982, and that she resides at [REDACTED]. [REDACTED] notes that this statement is only marginally relevant to the issue of the applicant's entry and residence. [REDACTED] does not state with any specificity where he first met the applicant, how he dates his acquaintance with her, or how he would have direct, personal knowledge of the address at which the applicant was residing between January 1, 1982 and May 4, 1988. The statement is ambiguous and

provides no independently verifiable detail regarding the applicant's circumstances during the requisite statutory period. For these reasons, [REDACTED] statement has very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982. Ultimately, the applicant submitted a photocopy of her own birth certificate. The AAO notes that, although the applicant's passport and her Form I-687 confirm that she was born in Ghana on February 15, 1953, this document indicates that her birth was not registered until April 13, 2004, and the photocopy of the registration was not issued until November 9, 2005.

The applicant submitted no other relevant documentation in support of her application for temporary residence. On February 1, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any credible documentation beyond her own assertions that she met the requirements for eligibility pursuant to the terms of the settlement agreements. The director noted that the applicant admitted at the time of her interview that she left the United States sometime in 1987 and then reentered the United States on December 24, 2003, with a visitor's visa, thus exceeding the 45 day absence limit. The director also noted that the applicant was absent from the United States in both 1983 and 1984 for the birth of her two children and therefore rendering her claim of continuous residence from January 1, 1982 through May 4, 1988 not credible. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of her application.

In response to the NOID, the applicant submitted a notarized statement from [REDACTED] dated February 16, 2006, with a photocopy of a New Jersey state driver's license. [REDACTED] stated that he has known the applicant since 1980 and that she has "also known her in Ghanaian community gatherings." Like the statement submitted by [REDACTED]-the AAO finds this document to be equally lacking in factual detail and devoid of independently verifiable evidence. **The AAO concludes that this statement is not credible and of little probative value.** The applicant also submitted photocopies of two letters addressed to her from family members in Ghana, postmarked July and August 1984. These documents appear to be prematurely aged with some type of fluid and there is nothing to indicate that they were received and processed through the United States postal system. Therefore, these documents are afforded marginal probative value.

On appeal, the applicant maintains that she stated at her interview that her children were born in 1993 and 1994 and therefore outside the statutory period. She also asserts that she did not state at her interview that she departed the United States in 1987 and that the two letters she submitted attest to her residence for the statutory period. In support, the applicant submitted a photocopy of a Ghanaian birth certificate issued for her son, with a date of birth of [REDACTED]

First and foremost, the AAO cannot assess the authenticity of the alleged birth certificate. We note that it is different in form from the photocopy of the applicant's birth certificate submitted at the time of her interview. For example, the applicant's birth certificate was issued in a typed

format, and the child's birth certificate is filled out in handwriting. The applicant's registration is signed by [REDACTED] of Births and Deaths, but the child's registration is signed by [REDACTED]. Both birth certificates appear to have been issued many years after the actual events they record, in this case, the applicant's birth in 1953 and her son's birth either in 1983 or 1993. Also, the AAO observes that the child's birth registration was issued on November 21, 2005, well in advance of her interview on January 9, 2006. There is no explanation why this document was not offered at that time, or why the adjudications officer would have recorded 1983 instead of 1993. For these reasons, the birth registration offered in support of the applicant's appeal is given little probative weight.

Second, the AAO notes that continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). The evidence in the record before us indicates that the applicant departed the United States sometime in 1987 and did not return until December 2003. The applicant's passport confirms an entry into the United States on December 24, 2003. This absence is well in excess of the 45-day absence limit and therefore disqualifies the applicant from eligibility for temporary resident status pursuant to the settlement agreements. The applicant has not provided any credible, probative evidence other than her own attestation that this information is incorrect. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony, and in this case she has failed to do so. The applicant has not overcome the deficiencies in the evidence noted by the district director. Therefore, she 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.