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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 27 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:

[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 if your case was remanded for further action, you will be contacted.

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. 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. Specifically, the director noted that the applicant submitted no additional documentary or credible testimonial evidence in response to the Notice of Intent to Deny (NOID). The director denied the application, finding that 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.

The applicant is represented by counsel on appeal. Counsel maintains that the applicant changed residence from New York to California, and thus, did not receive the NOID. Counsel argues that the applicant should be granted additional time to respond to the NOID.

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 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).

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.* at 80. 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, 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 or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his 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.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 21, 2005. He states therein that he was born in Accra, Ghana, on February 12, 1980. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States as [redacted] from **1986 to 1989. The Form I-687 does not list any residence prior to 1986.** Similarly, at part #33, where applicants were asked to list employment in the United States since first entry he stated that he was employed as a supermarket delivery person by the Third Avenue Food Emporium from 1998 to 2001 and then as a salesman at Victoria Fashions from 2001 to 2005.

The applicant submitted no other documentation in support of his application for temporary residence. The applicant was interviewed by a district adjudications officer on January 10, 2006. The interview worksheet reveals that the applicant stated that he entered the United States in 1981 on a visa with his mother. The applicant provided an address at [redacted] from February 1981 to December 1984. The applicant also

submitted a notarized statement from [redacted], dated December 8, 2005. [redacted] claimed that the applicant and his mother, [redacted] were his tenants at [redacted] from February 1981 to December 1984. The AAO observes that the notice to appear for an interview (Form G-56) was issued by the New York district office of U.S. Citizenship and Immigration Services (U.S. C.I.S.) and mailed to the applicant at [redacted] The applicant was directed to appear for an interview at the U.S. C.I.S. district office located at [redacted] It is clear from the record that the applicant received this notice and appeared for the interview as scheduled, thus confirming the address listed on the Form I-687. The AAO notes further that, contrary to the applicant's assertions on appeal, there is no evidence from the interview worksheet that the adjudications officer made note of a new, California address for the applicant.

In examining the statement from [redacted], the AAO observes that [redacted] does not state with any specificity where he first met the applicant, how he dates his acquaintance with him, or how he has direct, personal knowledge of the address at which the applicant was residing from the time he dates his acquaintance in 1981. [redacted] claimed that the applicant and his mother were his tenants for approximately four years. However, the evidence of record does not include any documentary evidence, such as rent receipts, or rental agreements, to corroborate his assertions. There is nothing to identify that [redacted] resided at that address during the period of time the applicant alleges that he lived there. The AAO concludes that the statement from Mr. [redacted] is not credible, probative, or capable of independent verification. For these reasons, the the statement from has no probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

On February 1, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any documentation beyond his own assertions that he met the requirements for eligibility pursuant to the terms of the settlement agreements. 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 his application. The AAO notes that the NOID was again addressed to the applicant at the Bronx address listed on both the Form I-687 and the Form G-56. Furthermore, the record does not indicate that the NOID was returned undelivered to the U.S. Postal Service.

The applicant submitted no further evidence in support of his application for temporary residence, and the director denied the application on April 4, 2006. In denying the application, the director found that the affidavit submitted at the time of the applicant's interview on January 10, 2006 was insufficient to overcome the grounds for the denial of the application. Specifically, the director concluded that the applicant failed to provide credible evidence that he entered the United States before January 1, 1982 and that he was continuously physically present in the United States for the requisite period of time.

On his Notice of Appeal (Form I-694), counsel submits no further evidence in support of the applicants request for temporary residence. Counsel's argument that the applicant never

received the NOID is not credible; as the applicant received the interview notice at the Bronx address listed on the Form I-687 and appeared as scheduled. The NOID was sent to the address of record. The applicant's statement on appeal that he informed the adjudications officer of his new California address at the time of his interview on January 10, 2006, and that the adjudications officer took written note of the new address is simply not supported by the record. The applicant does not explain how he received notice to appear for an interview in New York if he was then living in California. This explanation of a change of residence is rendered more implausible by the fact that the applicant did receive notice of the district director's final decision issued on April 4, 2006; also mailed to the Bronx address. Thus, it is clear that either the applicant himself, or someone with access to the applicant's mail was residing at the Bronx address and informed the applicant of the notice to appear for an interview in January, 2006, and the notice of the final decision issued on April 4, 2006. Thus, the AAO concludes that the applicant's claim that he never received the NOID, and would have addressed the deficiencies noted therein had he received it, is neither supported by the record nor remedied by the submission of further evidence.

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.