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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 22 2008

MSC 05 246 10098

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.

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel asserts that the director's decision is an abuse of discretion and contrary to the law. Counsel asserts that except for two absences of fewer than 30 days, the applicant has resided continuously in the United States since prior to January 1, 1982, and has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserts that it is unfortunate that prior counsel submitted false information on the applicant's behalf, and that the applicant was unaware of said information and cooperated with investigators when it came to light in denying the applicant's application

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 (Act), 8 U.S.C.** § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. *See* 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.* 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 (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 resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A lease agreement entered into on February 1, 1988, between the applicant and Heritage Park Apartments for residence at [redacted], Adelphi, Maryland.
- A 1981 wage and tax statement from Fox Entertainment at 2015 L Street, Washington, D.C.
- His passport issued on November 3, 1986, by the Ministry of Foreign Affairs in Ghana. The passport contains: 1) a departure stamp dated November 14, 1986, from the Ghana immigration; 2) a B-1/B-2 multiple nonimmigrant visa issued on November 4, 1986, at the American Consulate in Accra, Ghana valid through November 4, 1987; and 3) an entry stamp into the United States dated November 16, 1986.
- Bank statements dated May 15, 1987, June 15, 1987, August 15, 1987, and September 15, 1987, from Washington Federal Savings Bank along with several checks dated during May 1987 through December 1987.
- Earnings statements for the periods ending April 18, 1987, May 2 and 30, 1987, and August 8 and 22, 1987, from Sutton Place Gourmet II, Inc. in Bethesda, Maryland.
- Two earnings statements for the periods ending May 31, 1987, and June 30, 1987.
- A copy of his immunization record reflecting he received a vaccination on November 12, 1986, from the Ministry of Health in Ghana
- Several envelopes postmarked during 1987 and addressed to the applicant at addresses in Maryland and Washington, D.C.

At the time of his interview on January 17, 2007, the applicant, under oath, in a sworn statement admitted, in pertinent part:

> I did not work until 1982. I worked at an entertainment place, like a disco or a nightclub. I would clean it up. It was Fox Entertainment, the company. They stated paying me in cash, and later on gave me a paycheck. I worked for them almost 5 years, until I left for Ghana in 1986.

The director issued a Notice of Intent to Deny dated May 23, 2006, which advised the applicant the documents submitted failed to establish that he had entered the United States prior to January 1, 1982, and to have continuously resided since that date in the United States.

Counsel, in response, asserted that the applicant is submitting a copy of his Form I-94, which reflects his return to the United States on November 16, 1986 as well as an affidavit and supporting documentation to demonstrate his presence in the United Sates since June 1981.

The applicant, in his affidavit, asserted that he entered the United States prior to January 1, 1982 and has resided in a continuous unlawful status except for brief absences. Regarding his residences during the requisite period, the applicant indicated that the building where he resided from June 1981 to June 1985 had been converted to condominiums and was under a different management company. The applicant indicated that he resubmitted a copy of his 1981 wage and tax statement from Fox Entertainment, which verifies that he resided at [redacted] Silver Spring, Maryland. The applicant indicated that the building where he resided from June 1985 to February 1988 was under a different management company and they were unable to verify his residence. The applicant indicated that he is resubmitting a copy of his bank statement from Washington Federal dated May 15, 1987, which verifies that he resided at 2[redacted] Washington, D.C.

The director, in denying the application, noted that except for the applicant's arrival into the United States on November 16, 1986, the evidence in the record only establishes the applicant presence during 1987. The director further noted that although the applicant claimed to have departed the United States to vacation in Ghana from October 25, 1986, to November 16, 1986, his passport does not reflect an entry stamp into Ghana. The director determined that the applicant was in a lawful status from November 16, 1986, through the expiration of his nonimmigrant visa, December 15, 1986.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he was in a continuous unlawful status since that date through November 15, 1986, as contradicting and inconsistent documents have been presented.

The applicant admitted in his sworn statement that he did not work in the United States until 1982. As such, the 1981 wage and tax statement raises questions as to its authenticity and, therefore, has no probative value or evidentiary weight. The applicant claims to have resided in the United States since February 4, 1981, but submits only a 1981 wage and tax statement that has been discredited. It is unclear why the applicant would keep a 1981 wage and tax statement, but not documentation for the subsequent years such as lease agreements, utility bills, or rent receipts.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the document provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's contradictory statements on his application and his reliance upon one documentation that has been called into question, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record also contains the following documentation which further undermines the credibility of the applicant's claim to have resided in the United States since before January 1, 1982, through November 15, 1986.

A Form I-140, Petition for Prospective Immigrant Employee, filed by Sutton Place Gourment on behalf of the applicant on October 17, 1998.[1] Accompanying the Form I-140, are employment letters dated November 10, 1987, and March 22, 1989, from [redacted], chairman and managing director of Panaf Agro Development Consortum Ltd., in Accra, Ghana, and a Form ETA-750, Application for Alien Employment Certification. Mr. [redacted], in his initial letter attested to the applicant's employment from November 20, 1980, "to the time he left for his trip to United States," and in his second letter, Mr. [redacted] attested to the applicant's employment from November 1980 to July 1986. The Form ETA-750 indicated that the applicant had attended Accra Legon University in Accra, Ghana from October 1980 to July 1984.

The applicant indicated on the Part B of the Form ETA 750 that he was employed by Panaf Agro Development Consortum Ltd., in Accra, Ghana from November 1980 to July 1986.

In a letter dated August 13, 1996, pertaining to an Order to Show Cause, counsel stated that the applicant had "entered the United States on November 16, 1986 from Ghana where he is a citizen. He has resided in the United States on continual basis since this time." Counsel made no mention of the applicant residing in the United States prior to November 16, 1986.

Accompanying the Form I-485 application filed on May 22, 1995, the applicant submitted a Form G-325A, Biographic Information, on which he indicated that he resided in his native country, Ghana from October 1980 to November 1986, and he was married in Kumasi, Ghana on July 20, 1986. The applicant did not disclose this departure on his Form I-687 applications.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

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

[1] The Form I-I40 application was denied on May 1, 1989.