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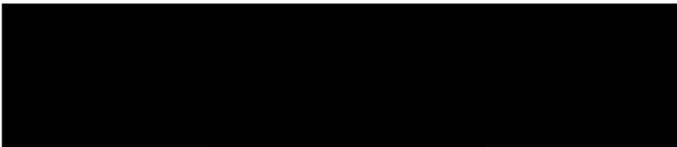
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [Redacted]
MSC 05 266 12063

Office: NEW YORK

Date: **MAY 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: SELF-REPRESENTED

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, New York, and 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 (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 in an unlawful status for the duration of the requisite period. Specifically, the director noted a number of discrepancies among the applicant's Form I-687, Form I-485, and the supporting documents.¹ The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that there are no notable discrepancies between her supporting documentation and her Form I-687. The applicant also supplements the record with additional supporting documentation.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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

¹ In addition to the Form I-687 that is adjudicated in the present matter, the record shows that the applicant had filed a Form I-485 seeking permanent resident status based on the Diversity Visa program.

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, 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 demonstrate that she resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that the following documentation has been submitted to establish that the applicant resided in the United States continuously during the statutory period:

1. An undated training certificate showing that [REDACTED], the applicant's husband, completed a four-year mechanic apprenticeship at Raymond Motors and a letter from Raymond Motors dated August 17, 1996 stating that the above named started his apprenticeship in September 1982 and completed it in October 1987. First, it is noted that even if the applicant's husband were to establish his own residence in the United States during the requisite period, this would not satisfy the separate burden on the applicant to establish her own residence in the United States during the same period. Second, even if these documents were not lacking in probative value vis a vis the applicant, the record shows that the applicant did not marry her husband until 1990, and there is no evidence to suggest that the applicant's husband had personal knowledge of her residence in the United States prior to that time. As such, neither document pertaining to the applicant's husband will be afforded any evidentiary weight to establish the applicant's residence in the United States during the statutory time period.

2. Two affidavits from [REDACTED] dated December 5, 2005 and April 17, 2006.² In the first affidavit, [REDACTED] claimed that she first met the applicant in August 1981 in Milford, Connecticut where the applicant was working. In the second affidavit, Ms. [REDACTED] further stated that the applicant's job in Milford, Connecticut was as a home care worker. The affiant claimed that the applicant took care of one of one of the affiant's neighbors. The latest affidavit is supplemented with a separate statement dated April 24, 2006, where the affiant provided her street address and claimed that she continues to be friends with the applicant to date. The statements lack any details that would lend credibility to the affiant's alleged 25-year relationship with the applicant. Furthermore, as noted by the director, the applicant did not list any employment in the State of Connecticut in No. 33 of her Form I-687, where the applicant was asked to provide her employment history in the United States. Based on the aforementioned deficiency, [REDACTED]'s affidavits will be afforded minimal weight as evidence.

3. An affidavit dated November 29, 2005 and another one dated April 17, 2006, both from Janet Narh, who claimed in the initial affidavit that she met the applicant at Victory Church in 1981. In the more recent affidavit, [REDACTED] stated that she had known the applicant since October 1981 and specified that the applicant was residing at [REDACTED], New York at that time. The affiant claimed that she used to meet the applicant for lunch and reiterated her prior claim that she and the applicant attended the same church. It is noted, however, that when asked to name affiliations and associations with clubs or churches in No. 31 of the Form I-687, the applicant provided no information, thereby suggesting that she was not affiliated with any such organizations as claimed by [REDACTED]. In support of her claim, the affiant provided a photograph of herself posing with the applicant. The photograph contains the date "4-10-1981" suggesting that the photograph was taken in April 1981. However, the affiant did not claim to have met the applicant until October 1981. Furthermore, the date on the photograph could have been added at any time and in no way establishes the specific date when the photograph was taken. The statements lack any details that would lend credibility to the affiant's alleged 25-year relationship with the applicant. Thus, the affiant's statements and accompanying photograph will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

4. Four additional photographs, all containing dates representing the alleged time periods during which the images were taken. It is noted that two of the photographs, depicting the applicant and an elderly woman in a wheelchair, appear to have been taken at the same time. However the dates that have been printed on the bottom of the photographs are different, one containing the date "05-18-81" and the other containing the date "07-02-81." Furthermore, as stated above, any photograph can be altered, with relative ease, to add a date. As such, the dates on the photographs submitted by the applicant are not a reliable means of determining when the events in the photographs actually took place, nor are there any details that would

² It is noted that in the 2005 affidavit, the affiant's last name is spelled "[REDACTED]," and in the 2006 affidavit, it is spelled "[REDACTED]"

establish where the photographs were taken. As such, these photographs have minimal probative value in establishing the applicant's residence in the United States during the statutory period.

5. A photocopied envelope addressed to the applicant with an October 29, 1981 postage date. It is noted that even if this envelope were a testament to the applicant's entry into the United States prior to the commencement of the statutory period, it is not evidence of continued residence in the United States since that date and continuing throughout the statutory period.

On August 27, 2006, the director denied the application, concluding that the applicant failed to submit credible documentation to corroborate her claim. The director specifically addressed the discrepancy between [REDACTED] statements regarding the applicant's employment in Connecticut and the employment history provided by the applicant. The director also noted another discrepancy between the applicant's Form G-325A, where the applicant claimed that she resided in Ghana from January 1991 to March 1996, and the residence information provided in No. 30 of the Form I-687, which included a U.S. residential address where the applicant purportedly resided from February 1990 to January 2000.

On appeal, the applicant disputes the director's finding claiming that she used to work in Connecticut on the weekends and that her job in New York as a hair braider did not conflict with her weekend job. However, in the present matter, the record still shows that the applicant did not include the job in Connecticut in the history of employment she provided in No. 33 of the Form I-687, even though she is required under penalty of perjury to disclose all employment in the United States since entry. The applicant's explanation on appeal does not overcome this inconsistency. 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).

Additionally, the applicant's marriage certificate shows that her marriage to her husband took place on January 20, 1990 in Accra, Ghana. However, the applicant failed to disclose any departures from the United States at No. 32 of the Form I-687. Lastly, in Part 2, No. 8 of the Form I-485 supplement, which the applicant filed in 1997, the applicant indicated that she was not employed in the United States after January 1977 without authorization.

The applicant asserts that her affidavits must be afforded maximum evidentiary weight due to the passage of time and the hardship of obtaining other evidence in support of the claim. The applicant's plea, however, is without merit. While affidavits are an acceptable form of supporting evidence, their probative value depends on their credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). In the present matter, the affidavits submitted by the applicant were found to be inconsistent from the applicant's claims.

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. Thus, given the applicant's contradictory statements on her applications and her reliance upon documents

with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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-*, 20 I&N Dec. 77. 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.