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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-230-12433

Office: NEW YORK

Date: DEC 21 2007

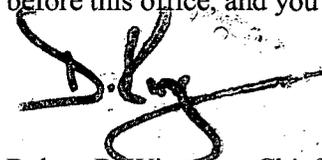
IN RE: Applicant: [REDACTED]

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. The file has 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.

The director determined that the applicant had failed to submit credible documents and testimony to establish by a preponderance of the evidence that he was eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant claims his eligibility for the immigration benefits sought.

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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982, and the date of filing his or her application for Temporary Resident Status, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. *See* 8 C.F.R. § 245a.2(h)(1)(i).

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 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. 8 C.F.R. § 245a.2(d)(5).

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. *See* 8 C.F.R. § 245a.2(d)(6).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period.

The record of proceedings shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 8, 2005. 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 to be 125 East 168th Street, apartment #2B, Bronx, New York, from January of 1980 to December of 1987. Similarly, at part #33, the applicant showed his first employment in the United States to be as a self-employed vendor from December of 2002 to the present. At part #32 of the I-687 application where absences from the United States were to be listed, the applicant indicated that he left the United States and traveled to Ghana for a family visit from December of 1987 to January of 1990; and that he traveled to Italy for employment purposes from April of 1990 to September of 2002.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter from Reverend [REDACTED] in which he stated that he was the pastor of the Universal African Brotherhood Church in 1980 when the applicant joined the congregation. The Reverend also stated that the applicant was a very respectful and responsible man with great abilities. This letter is inconsistent with the information provided by the applicant in his I-687 application, where he failed to list the church when asked in part #31 to list all of his affiliations or associations in the United States. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during the membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant in New York since 1980, and that they have become good friends, always keeping in close contact with one another. Here, the affiant fails to indicate under what circumstances she met the applicant. She has failed to specify the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, she has not included proof of her identity with this affidavit. Although the affiant attested to the applicant's residence in this country since 1980, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this

country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he physically saw the applicant in New York between the years 1980 and 1987, and that they have always kept in close contact with each other. Here, the affiant fails to indicate under what circumstances he met the applicant. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Although the affiant attested to the applicant's residence in this country since 1980, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since October of 1986 when she joined the Miracle Church of Christ in Brooklyn, where the applicant was an active member. There is no evidence to demonstrate that the affiant was acquainted with the applicant prior to January 1, 1982, to corroborate the applicant's claim of residence in the United States during that requisite period. The affiant has failed to specify the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. It is also noted that the affiant fails to list the applicant's address(es) in the United States during the requisite time period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director noted in the Notice of Intent to Deny dated February 8, 2006, that the applicant stated during his interview that he left the United States for Ghana in December of 1987, traveled from [REDACTED] in 1990, and returned to the United States in March of 2002. The director determined that the 15-year absence from the United States represented a clear break in the applicant's residency, as it far exceeded a 45-day absence from the country. The director also determined that the applicant's absence from the United States was not brief, casual or innocent and, as such, constitutes a break in the applicant's continuous physical presence during the statutory period from November 6, 1986 through May 4, 1988. However, the AAO notes that the applicant's absences from the United States from December of 1987 until September of 2002 or any subsequent time would be after the date that his Form I-687 was considered filed with the Immigration and Naturalization Service, and such absences are therefore not relevant to a determination of eligibility for temporary resident status. Hence, that portion of the director's decision will be withdrawn.

In response to the director's NOID, the applicant submitted a letter in which he stated that he had lived in the United States from January of 1980 to December of 1987. He further stated that the forty-five (45) day criteria should not be used against him again, where it was initially used to disqualify him from

applying for legalization. The applicant concludes by stating that the intent of the CSS/Newman settlement was to legalize aliens whom where in the United States between January of 1982 and November of 1986, but were disqualified for being absent from the country for more than forty-five (45) days.

In denying the I-687 application, the director reiterated the applicant's sworn statement attesting to his 15-year absence from the United States, and notes the affiant's statements also attesting to the applicant's absence outside the country from 1987 to 2002. The director further noted that the although the applicant claimed in his letter submitted on March 7, 2006, that he was disqualified from legalization in 1986, because he traveled outside the United States, the period for filing for legalization amnesty was between May 5, 1987 and May 4, 1988. The director also noted a discrepancy found in the applicant's I-687 and his class membership worksheet, where he indicated on his application that he had not previously filed for legalization, but on the worksheet stated that he had filed for legalization. The director determined that the contradictions found in the applicant's I-687 application and class membership worksheet calls into question the veracity of the applicant's claim.

On appeal, the applicant asserts his claim of eligibility for adjustment of status based upon the affidavits and other evidence submitted. He resubmits affidavits from [REDACTED] and the letter from Reverend [REDACTED]

Here, the applicant has failed to submit sufficient evidence to support his claim of residence in this country for the statutory period.

Given the paucity of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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 appeal will be dismissed.

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