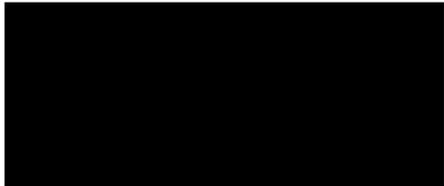


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U.S. Citizenship
and Immigration
Services

L 1



FILE: [REDACTED]
MSC-05-316-12382

Office: CLEVELAND

Date: SEP 07 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Cleveland, Ohio, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she 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. Specifically, the director found that evidence submitted by the applicant, when considered together with her testimony did not establish by a preponderance of the evidence that the applicant had maintained continuous residence in the United States during the requisite period. 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that she documents previously submitted establish that she entered the United States in October of 1981 and then continuously resided in the United States from September 1981 until December of 1988. It is noted that the applicant claims in her appeal that she began residing in the United States before she claims to have entered. The applicant goes on to state that though she only submitted affidavits as evidence that she entered the United States before January 1, 1982 and then continuously resided in the United States throughout the requisite period, the service erred in denying her solely on that basis.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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, 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 applicant 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. 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.

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 she resided in the United States from prior to January 1, 1982 through the date she 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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 12, 2005. At part #20 of her Form I-687 application the applicant was asked to provide her father's name and indicate whether he was living or deceased. Here, she indicated that he died in 1987. 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 her address in the United States during the requisite period to be [REDACTED] NY from September of 1981 to December of 1988. At part #32, where the applicant was asked to list all of her absences from the United States since January 1, 1982, the applicant showed that during the requisite

period, she went from the United States to Canada with her mother during the month of July in 1986. Though not relevant to the requisite period, it is noted that the applicant showed only one additional absence. This second and final absence is shown to be from December of 1988 until February of 2001. At part #33, where the applicant was asked to list all of her employment in the United States since January 1, 1982, she showed her employment during the requisite to be as a self-employed hair braider from June 1985 until December of 1988. It is noted that the applicant would have been seventeen (17) years old in June of 1985. Therefore, it is found reasonable that she did not show employment for previous years.

The record also contains notes from the applicant's interview with a CIS officer on October 21, 2005. Here, the record shows that the applicant indicated that she left the United States in 1987 to go to Ghana and that her father subsequently died in Botswana. It is noted that this is not consistent with the applicant's absences as she represented them at part #32 of her Form I-687. On her Form I-687, she indicated that her only absence from the United States during the requisite period occurred during the month of July of 1986 when she went to Canada with her mother and that she resided continuously in the United States after that absence until December of 1988. That this testimony provided by the applicant during her interview is not consistent with what she indicated on her Form I-687 casts doubt on whether the applicant fully, completely and accurately listed her absences and residences on her Form I-687 application.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided additional documentation in the form of seven (7) declarations, three (3) letters, a death certificate, and three (3) photocopies of envelopes that are relevant to the requisite period. It is noted that the record also contains photocopies of tax returns from the applicant's ex-husband and documents pertaining to her father's education. However, as these documents do not pertain to the applicant and as they fall outside of the requisite period, they are not relevant to this proceeding and are not detailed here.

Details regarding documents submitted by the applicant in support of her claim of having maintained continuous residence in the United States are as follows:

Seven (7) Declarations:

- A declaration from [REDACTED] who lives in Accra, Ghana. This document was stamped by the Commissioner of Oaths in Ghana. In this declaration [REDACTED] indicates that he has known the applicant since he and the applicant were children, as they are cousins. [REDACTED] goes on to say that he has never been to the United States, but knows that the applicant came to the United

States before 1982 because he was told by the applicant that she entered the United States illegally through the Canadian border. [REDACTED] goes on to say that he was not physically present in the United States at any point during the requisite period and has never seen the applicant in the United States. Though not required to do so, [REDACTED] has submitted a photocopy of his Ghanaian driver's license with his declaration. Though [REDACTED] indicates in this declaration that the applicant told him that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as [REDACTED] knowledge of the applicant's presence in the United States is based solely on statements made to him by the applicant. Therefore, very minimal weight can be given to this declaration.

- A declaration from [REDACTED] who lives in Accra, Ghana. In this declaration Mr. [REDACTED] indicates that he has known the applicant since he and the applicant were children, as the applicant is his niece. [REDACTED] goes on to say that he is a sailor who lives both in Ontario Canada and Tema, Ghana and has never been to the United States, but knows that the applicant came to the United States before 1982 because his sister wrote to him and told him this in a letter while he was at sea. He goes on to indicate that the applicant entered the United States illegally through the Canadian border. [REDACTED] further states that his sister and the applicant visited him in Canada in May of 1986. It is noted that the applicant indicated on her Form I-687 that she went to Canada in July 1986 with her mother and the record also indicates that when questioned about this trip during her interview with the CIS officer on October 21, 2005, the applicant could not remember why she went to Canada. Therefore, doubt is cast on the date of the applicant's visit to Canada. Though [REDACTED] indicates in this declaration that the applicant's mother told him that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as [REDACTED] knowledge of the applicant's presence in the United States is based solely on statements made to him by the applicant's mother. Therefore, very minimal weight can be given to this declaration.
- A declaration from [REDACTED] that was stamped by a Ghanaian Commissioner for Oaths on October 24, 2005. [REDACTED] indicates that she lives in Accra, Ghana. In this declaration Ms. [REDACTED] indicates that she has known the applicant since the 1960's as she is a family member of the applicant. [REDACTED] goes on to say that she was working in Ghana when the applicant entered the United States but knows that the applicant came to the United States before 1982 because the applicant told her that she did so. [REDACTED] goes on to say that he or she was not physically present in the United States during the requisite period and has never seen the applicant in the United States. Though not required to do so, [REDACTED] submitted her Electoral Commission of Ghana card as proof of her identity with this declaration. Though [REDACTED] indicates in this declaration that the applicant told her that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as [REDACTED] knowledge of the applicant's presence in the United States is based solely on statements made to her by the applicant. Therefore, very minimal weight can be given to this declaration. It is further noted that the [REDACTED] refers to the applicant as a male in her declaration on two occasions.

- A declaration from [REDACTED] who lives in Ghana. This document was stamped by the Commissioner of Oaths in Ghana. In this declaration [REDACTED] indicates that he has known the applicant since he and the applicant were children, as they are siblings. Though the applicant was not born until 1968, [REDACTED] indicates that he met her in 1964. [REDACTED] goes on to indicate that he was not a resident of the United States at any point during the requisite period, but knows that the applicant came to the United States before 1982 because he was told by the applicant that she entered the United States illegally through the Canadian border. [REDACTED] goes on to say that he has never seen the applicant in the United States. Though not required to do so, [REDACTED] has provided a photocopy of his Ghanaian Electoral Commission Voter Card as proof of his identity. Though [REDACTED] indicates in this declaration that the applicant told him that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as his knowledge of the applicant's presence in the United States is based solely on statements made to him by the applicant. Therefore, very minimal weight can be given to this declaration.
- A declaration from [REDACTED] who lives in Ghana. This document was stamped by the Commissioner of Oaths in Ghana. In this declaration [REDACTED] indicates that he has known the applicant since the 1970's, as she is his niece. [REDACTED] goes on to indicate that he was not a resident of the United States at any point during the requisite period and that he was living in Ghana when the applicant came to the United States, but he knows that the applicant came to the United States before 1982 because he was told by the applicant's mother that she would soon entered the United States illegally through the Canadian border. [REDACTED] goes on to say that he has never seen the applicant in the United States. [REDACTED] then states that the applicant's father told him that the applicant had entered the United States. Though not required to do so, Mr. [REDACTED] has provided a photocopy of his Ghanaian passport as proof of his identity. Though Mr. [REDACTED] indicates in this declaration that the applicant's parents told him that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as his knowledge of the applicant's presence in the United States is based solely on statements made to him by the applicant's parents. Therefore, very minimal weight can be given to this declaration.
- A declaration from [REDACTED] who lives in Ghana. This document was stamped by the Commissioner of Oaths in Ghana. In this declaration [REDACTED] indicates that he has known the applicant since meeting her sometime between 1968 and 1970, as he is friends with the applicant's family. [REDACTED] goes on to indicate that he was not a resident of the United States at any point during the requisite period and that he was living in Ghana when the applicant came to the United States, but he knows that the applicant came to the United States before 1982 because he was told by the applicant's mother that she did. [REDACTED] goes on to say that he has never seen the applicant in the United States. Though not required to do so, [REDACTED] has provided a photocopy of his Ghanaian Electoral Commission Voter Card as proof of his identity. Though [REDACTED] indicates in this declaration that the applicant's mother told him that she lived in the United States during the requisite period, this declaration is found neither probative nor amenable to verification as his knowledge of the applicant's presence in the United States is

based solely on statements made to him by the applicant's mother. Therefore, very minimal weight can be given to this declaration.

- A declaration from [REDACTED] who lives in Ghana. This document was stamped by the Commissioner of Oaths in Ghana. In this declaration [REDACTED] indicates that he has known the applicant since birth, as she is the applicant's mother. [REDACTED] goes on to indicate that she was living in New York at the time the applicant came to the United States and also that she was with the applicant and her late husband at the time the applicant entered the United States in Detroit after entering illegally through Canada. [REDACTED] goes on to say that she had very little money and so she home schooled the applicant. [REDACTED] states that she has no documents proving that she was in the United States at any point during the requisite period. Though not required to do so, the applicant's mother has submitted a photocopy of some pages of her passport as proof of her identity.

Three (3) letters:

- A letter from [REDACTED] stating that she was unable to find evidence of the applicant's father having filed for legalization during the initial legalization period. In this letter, the applicant's mother claims that the applicant's father attempted to file in May of 1987.
- A letter from [REDACTED] that was dated and notarized on October 19, 2005. In this letter, Ms. [REDACTED] states that she met the applicant in New York in 1981. She goes on to say that the applicant left when her father got sick in 1987. Though [REDACTED] provides an address at which it is personally known to her that the applicant lived during the requisite period, it is noted that her statement that the applicant lived in New York until 1987 conflicts with information shown on the applicant's Form I-687 where she showed that she resided continuously in New York until December of 1988 and that her only absence from the United States during the requisite period was in July of 1986. In this letter, [REDACTED] fails to establish how she met the applicant. Though she states that she saw the applicant's family often, she does not state the frequency of these visits or establish when they began or ended. This letter is found to be insufficiently detailed to establish that the applicant maintained continuous residence in the United States during the requisite period. Further, as information in this letter conflicts with information provided by the applicant, doubt is cast on the information in both this letter and that provided by the applicant in her Form I-687. As it is both insufficiently detailed and conflicts with evidence in the record, this letter can be accorded minimal weight.
- A letter from [REDACTED] stating that she is friend's with the applicant's brother and has known her family for eight to nine years. This letter is not notarized or dated and indicates that [REDACTED] lives in Pennsylvania. In this letter, [REDACTED] fails to state how she knows that the applicant lived in the United States from 1981 to 1987. [REDACTED] also fails to indicate how or when she met the applicant or indicate an address at which it was personally known to her that the applicant resided at during the requisite period. This letter is found to be insufficiently detailed to establish that the applicant maintained continuous residence in the United States during the requisite period.

Further, it is noted that her statement that the applicant lived in the United States until only 1987 conflicts with information shown on the applicant's Form I-687 where she showed that she resided continuously in the United States until December of 1988 and that her only absence from the United States during the requisite period was in July of 1986. Because this letter is both insufficiently detailed to establish that the applicant maintained continuous residence in the United States during the requisite period and because it conflicts with evidence in the record, this letter can be accorded minimal weight.

Three (3) Envelopes:

- Photocopies three (3) envelopes addressed to [REDACTED] at [REDACTED]. The first envelope is postmarked but the date is not legible, the second envelope is postmarked in September of 1980 and the third envelope is postmarked but the date is not legible. These envelopes were all sent using Ghanaian stamps by air mail. Because the name associated with this envelope is the applicant's father's name rather than her name, they cannot be clearly associated with the applicant. Therefore, these envelopes cannot be accorded any weight in establishing that the applicant resided continuously in the United States during the requisite period.

The applicant's father's death certificate:

- This death certificate states that the applicant's father, a meteorologist died of a heart attack in Botswana on June 30, 1987.

Of the seven (7) individuals who the applicant submitted declarations from in support of her claim of maintaining continuous residence in the United States during the requisite period, only one individual states that she has personal knowledge that the applicant resided in the United States during that time. That individual is the applicant's mother, who does not offer any evidence that she herself was continuously residing in the United States during that time. The six (6) other declarations submitted by the applicant are from individuals who have never been to the United States and are relying solely on the applicant or her parent's having told them that she lived in the United States as their basis for knowing that she did so. Further, one declarant, who claims to be the applicant's brother, states he met her in 1964 when she was not born until 1968. Another individual referred to the applicant as a male twice in a statement made within the declaration. Though the applicant claimed on her Form I-687 that her only absence during the requisite period was to Canada in July 1986, in his declaration, the applicant's uncle claims that she visited him in May of that year. Therefore, these documents can be accorded very minimal weight in establishing that the applicant maintained continuous residence in the United States during the requisite period.

Two of the three letters submitted by the applicant state that the applicant left the United States in 1987 which conflicts with what the applicant showed on her Form I-687, where she indicated that she remained in the United States until December of 1988. That these letters are not consistent with other evidence in the record calls into question whether the applicant fully and completely represented her absences, places

of employment and places and dates of residence in the United States. Because these letters are not probative or amenable to verification and because they contain information that conflicts with other evidence in the record, they are accorded very little weight in establishing that the applicant maintained continuous residence in the United States during the requisite period.

Because neither the applicant's father's death certificate nor the envelopes addressed to him pertains to the applicant, they are not accorded any weight in establishing that the applicant maintained continuous residence in the United States during the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she entered the United States in 1981 and resided continuously throughout the requisite period and then until December of 1988 with a brief absence in July of 1986 when she went to Canada. Evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant visited her uncle in Canada in May rather than in July of 1986 and also showed that the applicant left the United States in 1987 when her father became ill. Because her father died on June 30, 1987, this indicates that the applicant left before that date. This is not consistent with what the applicant showed on her Form I-687, where she indicated that she worked and lived in New York until December of 1988 and was not absent from the United States in 1987.

In denying the application the director stated the above and noted that statements made during her interview, when considered with the record did not establish that the applicant resided continuously in the United States for the duration of the requisite period.

On appeal the applicant attempts to explain these contradictions. She furnishes a new letter from her mother and a brief stating that though she submitted only affidavits in support of her claim of having maintained continuous residence in the United States during the requisite period, the Service erred by saying that these affidavits were not sufficient proof that she had maintained continuous residence in the United States during that period. The letter from the applicant's mother restates that she and the applicant lived in New York during the requisite period and that she home schooled the applicant at that time. No additional documentation was submitted with the applicant's appeal.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

In determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, *supra*.

Though the applicant is correct in stating that it has been held that credible affidavits can establish that an applicant maintained continuous residence during the requisite period, in this case, affidavits submitted by the applicant were not found to be internally consistent with other documents in the record regarding the applicant's absences from the United States, casting doubt on both the credibility of the declarations and on information provided by the applicant on her Form I-687.

It is noted that the brief submitted by the applicant with her appeal contains further inconsistencies, stating that the applicant entered the United States in October of 1981, but resided in the United States one month prior to her date of entry, in September of 1981.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and though she has submitted attestations from nine individuals, including her mother, of these six individuals have never been to the United States and claimed that they based the information contained in their declarations on statements made to them by the applicant or her parents. Of the three remaining individuals, two did not establish how they met the applicant or how they personally know that she was in the United States for the duration of the requisite period. The remaining person who submitted attestations is the applicant's mother, who currently lives in Ghana and submitted no documentation supporting her own claim of having resided in the United States during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the evidence produced by the applicant is neither probative nor credible.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted attestations from nine (9) individuals as evidence of her continuous residence during the requisite period to satisfy her burden of proof. However, these documents were found to be inconsistent with other evidence in the record and were therefore not found to establish, by a preponderance of the evidence that the applicant had maintained continuous residence in the United States during the requisite period.

The absence of sufficiently detailed 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 documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 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 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.

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