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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted]
MSC-05-230-14503

Office: MEMPHIS

Date: **AUG 29 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:



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, Memphis. 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 denied the application on April 26, 2006. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period.

On appeal the applicant, through counsel, states that the evidence submitted establishes that the applicant has been in the United States since 1980. The applicant has submitted two additional witness statements on appeal, as well as a criminal record check from the Nashville Police Department and several documents that fall outside the requisite period.

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).

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. See 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).

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 applicant 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 he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 18, 2006. The applicant submitted the following documents in support of his application:

- An affidavit from [REDACTED] dated December 17, 2005. The affiant states that he was the applicant’s roommate in New York and that he and the applicant moved to Nashville, Tennessee in April of 1990. Although the dates and place of residence are consistent with the information provided by the applicant on the Form I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant, or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 22, 2006. The affiant states that he met the applicant at a party in New York in 1980 and that he has been friends with the applicant since that time. The affidavit lacks probative details such as the nature and frequency of the affiant’s contact with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period..
- A letter from [REDACTED] which is not dated. The declarant claims to have known the applicant since 1986. The declarant does not claim to have personal knowledge of the applicant’s residence in the United States during the requisite period. The declarant does not provide any detail regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the letter has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- A letter from [REDACTED] which is not dated. The declarant states that she has known the applicant since 1982. The declarant does not explain how she came to know the applicant or how she dates her initial acquaintance with him, nor does the declarant claim to have personal knowledge of the applicant's residence in the United States during the requisite period. Given these deficiencies, the letter has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of an I-94 Departure Record issued to the applicant which bears an admission stamp dated July 19, 1986. In addition, the record contains a Social Security Statement issued to the applicant by the Social Security Administration which shows that the applicant had earnings beginning in 1986. Finally, the applicant submitted copies of birth records for his children issued by the Republic of Ghana. According to these records, the applicant's son, [REDACTED] was born in Ghana on [REDACTED] and the applicant's daughter, [REDACTED] was born in Ghana on [REDACTED]. All of this tends to indicate that the applicant was not residing in the United States throughout the requisite period and, instead, was residing in Ghana for at least part of that time.

In addition, the applicant submitted documents that fall outside of the requisite period. These include copies of pay stubs, W-2 Wage and Tax statements, employer and landlord letters, rent receipts, insurance documents, and loan documents. As these fall outside of the requisite period, they have no probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with little or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.