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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

JAN 04 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

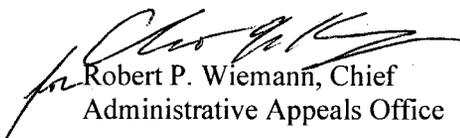
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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, 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 not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his 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, counsel reasserts the applicant's eligibility for temporary residence status.

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)(1) 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 the CSS Settlement Agreement, paragraph 11 at page 6, and the 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 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.* 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 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 submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit sufficient probative and credible evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on February 25, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED] New York as his address from December of 1981 to February of 1990. Similarly, at part #33, the applicant showed that he was self-employed as a street vendor in New York, New York, from May of 1982 to February of 1989.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestations:

- A letter from [REDACTED] located in Bronx, New York, in which he stated that the applicant was initially registered with the church on January of 1982 through June of 1993. He further stated that during that period, the applicant was a Deacon, an active member of the Prayer & Evangelistic Ministry and the Ushering Department. The Elder provided a contact telephone number, but no photographic identification. Here, the statement made by the Elder is inconsistent with the applicant’s information on Form I-687, at part #31 where he did not indicate that he was a member of any church or affiliated with any group. It is also noted that during his interview with Citizenship and Immigration Services (CIS) on January 5, 2006, the applicant stated under oath that he came to the United States in December of 1981 and

stayed until September of 1990, when he left to visit Ghana. The applicant also stated under penalty of perjury that he did not return to the United States until October 30, 2002, with a B1/B2 visa. 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 and testified to under oath, 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 application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Id.* at 591-92. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period and it lacks sufficient details of his relationship with the applicant. Though not required to do so, he has not included proof of his identity with this affidavit. Because the statement conflicts with other evidence in the record 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 has known the applicant since February 15, 1982. He further stated that he and the applicant met at an African meetinghouse located at [REDACTED] Bronx, New York. The affiant concludes by stating that he was a member of the United African Brotherhood (UAB); a church which was located on Park Avenue, and that the applicant became an active member of the church during the churches' Easter convention in April of 1982. It is noted that the affiant provided and the AAO recognizes a photocopy of pages 12 and 13 of his 1978 visa, a copy of the front cover of his Ghanaian passport, and a copy of the deed to his house located in Bronx, New York. Here, the statement made by the affiant is inconsistent with the applicant's information on Form I-687, at part #31 where he did not indicate that he was a member of any church or affiliated with any group. The affiant does not state that he knew the applicant to be present in the United States prior to January 1, 1982. As noted in the previous paragraph, this inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout 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. *See Id.* at 591. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. Though not required to do so, the affiant has not included proof of his identity (photo identification) with this affidavit. Because the statement conflicts with other evidence in the record, 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 has known the applicant since 1982, and that they met at an African meetinghouse in the Bronx, New York. He further stated that he has established an ongoing relationship with the applicant through telephone calls and visits. The affiant also stated that he and the applicant both worked for [REDACTED] located in Hunts Point, Bronx, New York, during 1983. Here, the statement made by the affiant is inconsistent with the applicant's information on Form I-687, at part #33 where he indicated that he was a self-employed vendor in New York, New York, from May of 1982 to February of 1989. As noted in the previous paragraph, 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 and testified to under oath, doubt is cast on the assertions made. *See Id.* at 591. It is noted that the affiant does not state that he knew the applicant to be present in the United States prior to January 1, 1982. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. Though not required to do so, the affiant has not included proof of his identity with this affidavit. He has 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 since prior to January 1, 1982. Because the statement conflicts with other evidence in the record, is significantly lacking in detail, and is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The record of proceedings contains copies of tax records and certifications submitted by the applicant and dated 2005. This evidence will not be considered in evaluating the applicant's eligibility for the benefit sought in that it is subsequent to, and therefore irrelevant to, the requisite period in question.

In denying the application the director noted that the affidavits submitted by the applicant do not meet the credible affidavit criteria.

On appeal, counsel states that the decision was rendered against the weight of the evidence; that the affidavits submitted were not given due consideration; that the denial was solely based on the fact that the applicant only submitted affidavits; and that the **passage of time and misplacement of documents were not** taken into consideration. The applicant resubmits the [REDACTED] and [REDACTED] affidavits.

Contrary to counsel's claim, a review of the record shows that the director's decision was not rendered against the weight of the evidence. The applicant submitted two affidavits and a letter from clergy. These were the only documents submitted and were given due consideration in the director's decision. It is noted that the director's decision was not solely based on the fact that the applicant only submitted affidavits, but was based upon a review of the record in its entirety. The attestations were the only evidence submitted, and the director determined that they were insufficient to establish the applicant's eligibility for want of detail, verification, and clarification. There is no evidence that the director failed to take into consideration the passage of time and misplacement of documents.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. Because the statements and evidence are inconsistent, and no independent objective evidence has been presented to explain the inconsistencies, doubt is cast on the assertions made as they relate to the applicant's residence in 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. *See Id.* at 591-92. The attestations from [REDACTED] and [REDACTED] conflict with other evidence in the record and are lacking in detail.

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 his applications and during his interview, and his reliance upon documents with minimal 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.