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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAINT PAUL

Date:

MAY 30 2008

MSC-05-298-31340

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. 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, Saint Paul. 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 applicant's Class Membership Application, finding that he failed to establish that he meets the class definition. The denial of the applicant's class membership is now on appeal before a Special Master appointed under the terms of the CSS/Newman Settlement Agreements. Pursuant to the denial of the applicant's Class Membership Application, the director administratively closed his Form I-687 application. The administrative closure of the applicant's Form I-687 application was in error because the director, in part, issued her denial based on the merits of the Form I-687 application. 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. By issuing this decision, the director denied the Form I-687 application. Therefore, the decision to administratively close the applicant's Form I-687 application is withdrawn. Accordingly, the AAO has jurisdiction over this proceeding. 8 C.F.R. § 245a.2(p).

On appeal, the applicant, through counsel, asserts that he has met his burden of proof in this proceeding. Counsel cites to the three affidavits the applicant furnished as corroborating evidence. Counsel states that these three affidavits and the applicant's testimony establish by a preponderance of the evidence that he has resided in the United States for 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).

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. 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on July 25, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided in New York, New York. The applicant showed that he resided at [REDACTED] New York from December 1981 until November 1985 and [REDACTED] New York from December 1985 until December 1989. The applicant listed his date of birth on his application as March 10,

1971. Therefore, he was ten years old when he first entered the United States. The applicant submitted with his application a copy of his birth certificate as evidence of his identity.

On November 17, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID provides that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be submitted to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted notarized letters from John Badu and Marie Isabelle Pierre.¹

The notarized letter from [REDACTED] dated November 30, 2005, provides, "I hereby confirm that I have known [REDACTED] since the middle of December, 1981 in this country. I used to attend Informal Ghanaian Political and Social gatherings with him and other Ghanaians." [REDACTED] attached to his letter a copy of the biographical page of his United States passport as evidence of his identity. This letter fails to provide any detailed information on [REDACTED] relationship with the applicant. The letter fails to delineate how [REDACTED] and the applicant first became acquainted. In addition, the letter fails to convey the frequency and type of contact they maintained during the requisite period. The letter states that [REDACTED] **attended Ghanaian political and social gatherings with the applicant.** However, it does not indicate where those gatherings were held and the time period that they attended these gatherings. Given the deficiencies in this letter, it is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The notarized letter from [REDACTED], dated December 1, 2005, provides, [REDACTED] [REDACTED] has been known to me since December 1981 in this country when I first met him at an end of year African party. I have maintained a fairly good relationship with her [sic] since that time." [REDACTED] attached to this letter a copy of the biographical page of her United States passport as evidence of her identity. This letter similarly contains several apparent deficiencies.

¹ These documents are entitled "Affidavit of Witness." In this proceeding these documents will be referred to as notarized letters because there is no indication that they have been sworn to before a notary.

This letter fails to provide any detailed information on [REDACTED] relationship with the applicant. The letter states that [REDACTED] met the applicant at an end of the year African party. However, it does not convey where this party was held or provide any others details on how they first became acquainted. In addition, the letter fails to delineate the frequency and type of contact they maintained during the requisite period. Given the deficiencies in this letter, it is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On July 17, 2006, the applicant was interviewed for temporary resident status. The applicant testified that he first entered the United States at John F. Kennedy Airport in December 1981. The applicant stated that he traveled to the United States with the assistance of a flight attendant. The applicant stated that he was admitted to the United States with a visitor visa. The applicant stated that from December 1981 until November 1989 he lived with his uncle. The applicant stated that he did not attend school or work in the United States between 1981 and 1988.

On July 26, 2006, the director issued a decision to deny the application. In denying the application, the director found that the letters from [REDACTED] and [REDACTED] are vague and general in nature. The director noted that neither of these letters provides detailed information regarding the applicant's whereabouts during the requisite period. The director concluded that the applicant failed to provide evidence to establish his continuous unlawful residence during the requisite period. The director further concluded the applicant failed to provide evidence he (or his parent or spouse) had been advised by the Immigration and Naturalization Service (the Service) or a Qualified Designated Entity during the original legalization application period that because he (or his parent or spouse) traveled outside the United States without permission from the Service after November 6, 1986, he (or his parent or spouse) was ineligible to apply for legalization.

On appeal, counsel asserts that the applicant has submitted two affidavits and testified in support of his application. Counsel notes that the applicant has submitted a third affidavit on appeal. Counsel states that the affiants have first hand knowledge of the applicant's presence in the United States since the middle of December 1981. Counsel notes that the applicant has submitted three affidavits from three different persons who attest to the same facts. Counsel states that the consistency of the affidavits establishes their credibility. Counsel asserts that the substance of the affidavits, when viewed within the totality of the circumstances, establishes that the applicant's eligibility for temporary residence status is more than "probably true." Counsel asserts that the applicant has proven by a preponderance of the evidence that he has resided in the United States during the requisite period of time.

The applicant submits, on appeal, a statement outlining his residence in the United States. The applicant asserts that he entered the United States through John F. Kennedy airport in December 1981. The applicant states that he was admitted to the United States with a visitor's visa. The applicant states that after his arrival he resided with his uncle in New York, New York. The applicant notes that because of his unlawful status, he could not attend public school. The

remainder of the applicant's statement addresses his eligibility for class membership, which as noted, is not relevant to this proceeding.

The applicant submits another statement from [REDACTED] dated August 13, 2006. affidavit provides:

I, [REDACTED] have known [REDACTED] to be living in the United States since December 1981. At that time he was living with his uncle [REDACTED] where we used to attend Afro Caribbean functions together. Gabriel and I belonged to the youth wing of the club where we took part in-group [sic] performances in drama, dance and choreograph during summer fun fares, parties and carnivals. Upon moving house [sic] to [REDACTED] he and his family joined the St Francis Catholic Church. In this church Gabriel was always actively involved in Christmas, Easter and other church programs . . .

Although this affidavit provides more detail than the previous statement from [REDACTED] it still contains several apparent deficiencies. Notably, the affidavit provides information that is not listed on the applicant's Form I-687 application. The Form I-687 requests the applicant to list his affiliations or associations with any clubs, organizations or churches. The applicant left this part of the application blank, indicating that he has not been involved with any of these groups. However, [REDACTED] affidavit indicates that the applicant was involved in the youth wing of a club and St. Francis Catholic Church during the requisite period. The applicant's failure to list this information on his Form I-687 application draws into question the credibility of [REDACTED] assertions. Moreover, [REDACTED] assertions are vague and fail to provide detailed information that would lend to their credibility. The affidavit does not provide the name and/or location of the youth wing of the club [REDACTED] claims she was involved in with the applicant. Nor does the affidavit provide any details on the Afro Caribbean functions [REDACTED] claims to have attended with the applicant. Given the deficiencies in this affidavit, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has furnished as his evidence three written statements, which as described, are of little probative value. On appeal, counsel asserts, "applicant submitted three (3) affidavits from three (3) different people who attested to essentially the same facts. The consistency between the affidavits establishes their credibility." The applicant in fact submitted three statements from two different people, [REDACTED] [REDACTED]. Although these statements do not contradict each other, their lack of detail renders them of little probative value. Counsel further asserts, "[t]he substance of the affidavits, when viewed within the totality of the circumstances, establishes that Applicant's eligibility for status under section 245A of the Act is more than 'probably true.'" Since these statements are of little probative value, when viewing them either individually or within the totality, they do not establish that the applicant's claim is probably true. Therefore, the applicant

has not established by a preponderance of the evidence that he has continuously resided in the United States for the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously detracts from the credibility of his 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.