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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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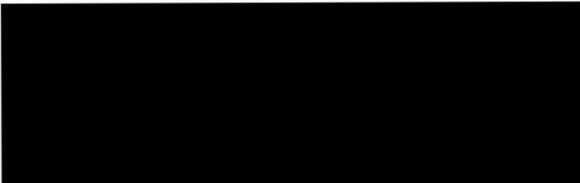
Applicant:



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. 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.

Perry Rhew
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 Director, Baltimore. 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the director committed an error by denying the application. Counsel argues the applicant has produced enough evidence to establish his eligibility. Counsel further states that the director should have not based his decision on the fact that the applicant had two children born in Ghana during the time he was in the United States. Counsel asserts that the applicant's wife is from Canada and traveled to the United States to see the applicant during his presence in the United States. Counsel submits additional documentation for consideration.

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and 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 “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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1980.
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1983.
4. The applicant’s Republic of Ghana passport No. [REDACTED] issued to him on August 25, 1981 in Accra, Ghana.
5. A notarized statement from [REDACTED] who states that the applicant visited him in 1988 and charged his cousin [REDACTED], now deceased, for having used his passport illicitly to travel to Toga a number of times in the 1980’s.

The affiants (Items # 1 through # 3 above) claim to have known the applicant for a substantial length of time, in one case since 1980. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants’ personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988.

On his Form I-687, the applicant was requested to list all absences from the United States dating back to January 1, 1982. The applicant listed no absences until he visited family in Canada in October 1987. However, the record reflects that his daughter and son were born in Ghana on December 11, 1982 and on September 20, 1984. On appeal, counsel states that the director should have not based his decision on the fact that the applicant had two children born in Ghana during the time he was in the United States. Counsel asserts that the applicant's wife is from Canada and traveled to the United States to see the applicant during his presence in the United States. However, counsel fails to submit documents identifying the mother of the applicant's two children born in 1982 and 1984 or forward proof as to where she was residing during those years. Counsel did not offer any evidence in support of his assertions. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

It is noted that on his Form I-687 he signed on November 28, 1988, the applicant listed that he had three children born in 1972, 1982 and 1984 but listed no spouse. Also, the record reflects that on February 26, 1991, the applicant divorced [REDACTED], whose prior name was [REDACTED] in the Cobb Superior Court in Cobb Country, Georgia. (No. [REDACTED]) However, there is no evidence showing she was the mother of his two children born in 1982 and 1984 or that she was from Canada and traveled to the United States to see him during his claimed presence in the United States. Based on the evidence of record to date, it is concluded that the applicant was probably residing abroad when his two children born in 1982 and 1984 were conceived.

On August 25, 1981, the applicant was issued his Republic of Ghana passport N. [REDACTED] in Accra, Ghana (Item # 4). He used that passport for extensive travel abroad during 1982, 1985, 1986 and 1987 although he does not show corresponding departures from and reentries into the United States on his Form I-687 during these years. The applicant submits a notarized statement from his uncle (Item # 5) to explain that [REDACTED] used the applicant's passport to make the trips abroad during 1982, 1985, 1986 and 1987. However, even after considering his uncle's statement, it is probable that the applicant used his own passport, made the trips himself and was not residing in the United States during the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted absence and residential history on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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