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U.S. Department of Homeland Security  
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Office of Administrative Appeals MS 2090  
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**OCT 30 2009**

MSC-05 267 11513

MSC-08 016 13905 – APPEAL

IN RE:

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 J. 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 in Fairfax, Virginia. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Ghana who claims to have lived in the United States since 1980, 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 on June 24, 2005. The director denied the application, finding 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.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period. Counsel does not submit additional evidence with the appeal.

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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.* 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet his burden.

In support of his claim of continuous unlawful residence in the United States for the requisite period, the applicant submitted a statement from the Social Security Administration (SSA) showing that the applicant earned income and contributed to Social Security since 1985, a postcard with foreign postmark date of "13-08-1981" mailed to the applicant at his claimed address in Brooklyn, New York, and a series of letters and affidavits from individuals who claim to have known the applicant resided in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record reflects that the applicant, who claims to have lived in the United States since 1980, submitted conflicting statements and documents regarding his initial entry into the United States and his continuous residence in the country through the requisite period. At his interview on March 13, 2006, the applicant stated that he first entered the United States illegally in 1980, that he went back to Ghana in 1983 and reentered the United States in 1985 with a visitor's visa. On the Form I-140 (Immigrant Petition for Alien Worker) filed on the applicant's behalf on April 30, 2007, the applicant indicated that he arrived in the United States in May 1985 with a B-2 visa.

On the Form I-687 he filed in June 2005, the applicant stated that he traveled outside the United States to Ghana from 1983 to 1985. On a statement accompanying his appeal, the applicant stated that he was absent from the United States from 1984 to 1985. The applicant did not submit any credible document to establish his entry into the United States in 1980 and his subsequent entry in 1985. The contradictory information regarding the applicant's entry and continuous residence in the United States, call into question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

Notwithstanding the applicant's claim of entry before January 1, 1982, the AAO determines that the statement from the SSA showing that the applicant earned income from 1985 onwards is sufficient credible evidence to establish that the applicant resided and was physical present in the United States during part of the statutory period – from 1985 through the requisite period. The AAO will focus its analysis in this proceeding on evidence submitted by the applicant in support of his residence and physical presence in the United States for the years prior to 1985 back to before January 1, 1982, which consists primarily of letters and affidavits and one postcard.

The letters and affidavits from acquaintances who claim to have known the applicant resided in the United States during the 1980s, have minimalist formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. None of the authors have first hand knowledge about the events and circumstances of the applicant's entry and continuous residence in the United States. None provided documents to establish their identities and residence in the United States during the 1980s, and none provided documents – such as photographs, letters or the like – demonstrating their personal relationships with the applicant in the United States during the years. Therefore, the letters and affidavits have little probative value as credible evidence of the applicant's continuous unlawful residence in the United States during the requisite period.

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any *objective evidence* to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of one postcard allegedly mailed to the applicant at his claimed address in Brooklyn, New York, with foreign postmark date of 1981, is suspect and not credible. It must therefore be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

Beyond the decision of the director, the applicant acknowledged on his sworn statement taken on March 13, 2006, and his statement on appeal that he was absent from the United States on a trip to Ghana, from 1983 to 1985. This absence from the United States of almost two years, far exceeded the 45-day maximum for a single absence and the 180 days aggregate maximum for all absences prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Ghana within the 45-day period allowed in the regulation. Thus, the applicant's trip to Ghana from 1983 to 1985 would have interrupted his continuous residence in the United States. On this ground as well, therefore, the applicant has failed to establish his eligibility for adjustment to temporary status under section 245A of the Act.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

For all the reasons discussed above, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the duration of 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.