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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE:

[REDACTED]

Office: BOSTON

Date:

MAR 30 2010

MSC 07 121 12595

IN RE: Applicant:

[REDACTED]

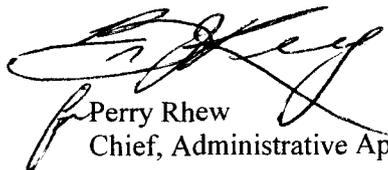
APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Boston, Massachusetts. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director misapplied the law and the facts in the case, and did not properly consider the evidence of record.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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. *See* 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.* 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 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Ghana who claims to have lived in the United States from September 1979 to November 1988, then went back to Ghana for nine years before returning to the United States on a student (F-1) visa in August 1997, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, in January 2006. As evidence of his residence in the United States during the years 1979 to 1988 the applicant submitted letters from individuals who claimed to have known him in the United States for some or all of those years in connection with the Unification Church, and two letters from individuals who claim to have seen the applicant in Canada during the years 1979-1981.

On June 15, 2007 the director issued a Notice of Intent to Deny (NOID). After observing that the applicant had not submitted any primary documentation, and determining that the letters in the record were lacking in specificity and detail, the director concluded that the applicant had failed to establish his continuous residence in the United States during the requisite period to qualify for temporary resident status under the Act.

On appeal counsel asserts that the director misapplied the law and the facts in the case, and did not properly consider the evidence of record. Counsel also submits additional documentation as evidence of the applicant’s residence in the United States during the years 1979-1988. The documentation includes:

- Four photographs of the applicant at Unification Church events allegedly taken in New York City on January 1, 1980; in Columbus, Ohio, on January 14-15, 1984; in Berkeley, California, on March 4, 1980; and on a Unification Church fundraising team bus on December 10, 1986.

- An affidavit by [REDACTED] a resident of Columbus, Ohio, dated July 10, 2007, stating that he and the applicant were joint participants on a Unification Church fundraising team which traveled all over the United States from May 1984 to February 1987.
- A membership history printout of the Unification Church detailing the applicant's month-by-month activities from September 1979 to November 1988, with a cover letter from the church's Boston office dated July 12, 2007.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that he has not.

The AAO agrees with the director that the 13 letters submitted with the Form I-687, from other Unification Church members, lacked sufficient specificity and detail. Many of the authors did not claim to have more than sporadic contact with the applicant during the 1980s, and some did not clearly say whether they saw him at all during the crucial years 1981-1988. Two of the authors claim to have known the applicant in Canada during the summer of 1979 and on subsequent visits to Canada in 1981, but never saw him in the United States during the years 1981-1988. For the reasons discussed above, the letters are not persuasive evidence that the applicant resided continuously in the United States during the years 1981 to 1988.

As for the photographs submitted on appeal, two of them appear beneath captions purportedly placing them in a definitive place and time ("Happy God's Day" – Manhattan – January 1, 1980; and "American Black Leadership Conference" – Columbus, Ohio – January 14-15, 1984). But the authenticity of this information, printed in letterhead blocks above the photographs, is difficult to ascertain. The original documents have not been submitted to facilitate a determination of authenticity. The other two photographs contain time stamps – dated March 4, 1980, and December 10, 1986. But there are no indicia in the photographs to place them geographically. In short, the photos could have been taken anywhere. For the reasons discussed above, the photographs are not persuasive evidence that the applicant resided in the United States at all, much less continuously, during the years 1981 to 1988.

The affidavit by [REDACTED] also submitted on appeal, does contain a fair amount of information about the fundraising tour he claims to have shared with the applicant from May 1984 to May 1987. But the affidavit contains no information about the applicant either before or after that experience. Since it does not cover the entire time period at issue in this proceeding, the affidavit is not persuasive evidence that the applicant was continuously resident in the United States during the requisite years of 1981 to 1988.

With regard to the letter from the Unification Church's Boston office and the accompanying membership history outlining the applicant's month-by-month activities for the church from September 1979 to November 1988, the AAO is not convinced that this documentation is reliable evidence of the applicant's continuous residence in the United States during that time period. There is no contemporary documentation corroborating the applicant's presence in the United States during any of those years. For someone claiming to have resided in the United States for nearly a decade, it is noteworthy that he is unable to produce a solitary document dating between 1979 and 1988. In fact, the earliest indisputable evidence of the applicant's presence in the United States is the F-1 visa he was issued in July 1997, with which he entered the country on August 14, 1997. Accordingly, the Unification Church membership history is not persuasive evidence that the applicant resided continuously in the United States during the requisite years of 1981 to 1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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