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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



L1



DATE: **MAR 20 2012** Office: LOS ANGELES File: 

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:

SELF-REPRESENTED

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, Los Angeles, California. 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. The director denied the application on June 9, 2011, finding that the applicant had not submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The director also determined that the applicant had not established that he did not disrupt his period of required physical presence and continuous residence in the United States.

On appeal, the applicant states that he traveled briefly for about three weeks in January 1984. The applicant submits declarations, affidavits, copies of photographs and other documents since his arrival in 1978 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 245(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).

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 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. 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 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. Evidence of residence and/or affiants that claim they met the applicant after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

The applicant claims on his Form I-687 application that he resided in Philadelphia, Pennsylvania from September 1978 to March 1982 and then Chicago, Illinois from March 1982 to July 1987. On appeal, the applicant claims he lived out of his car from July 1987 to March 1991.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from

In a declaration, Basil Ibewiro attests to the applicant being his brother and that he was living in Nigeria when the applicant went to the United States in August 1978. The declarant claims that he does not know where and how the applicant entered the United States. The declarant claims they kept in touch by letters and telephone but does not tell the frequency of these phone calls and letters. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

In a declaration, [REDACTED] attests to being the applicant's uncle and that he was living in Nigeria when the applicant told him he went to the United States. Although the declarant states that the applicant told him when he traveled and arrived in the United States, the declarant does not date the applicant's arrival in the United States and claims he does not know where and how the applicant entered the United States. The declarant claims they kept in touch by letters and telephone but does not tell the frequency of these phone calls and letters. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period but attests to the applicant's good moral character.

In a declaration, [REDACTED] attests to being the applicant's cousin and that he was living in Nigeria when the applicant told him he went to the United States. The declarant states that the applicant claims to have lived in the United States since 1978 and he does not know where and how the applicant entered the United States. The declarant claims they kept in touch by letters and telephone but does not tell the frequency of these phone calls and letters. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period but attests to the applicant's good moral character.

In a declaration, Professor [REDACTED] attests to being the applicant's cousin and that the applicant told him when he traveled and arrived in the United States in 1978. The declarant claims that he does not know where and how the applicant entered the United States. The declarant claims they kept in touch by letters and telephone but does not tell the frequency of these phone calls and letters. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

In a declaration, [REDACTED] states that he first met the applicant in Philadelphia in 1986. The declarant states that the applicant used to sell ice cream and that the applicant told him he came to the United States through Canada in 1978. The declarant states that they met randomly at the landlord's house where they paid monthly rent. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period but attests to the applicant's good moral character.

[REDACTED]

In a declaration, [REDACTED] states that he met the applicant the summer of 1982 at a park in Chicago. The declarant does not state the name of the park. The declarant claims that the applicant told him that he entered the United States at New York via Toronto, Canada in 1978. The declarant explains that they used to sell ice cream purchased from the Alexander ice cream company in the park from their trucks. The declarant states they use to ride together to pick up their trucks and rode home together. Afterwards, the declarant claims they shared two apartments in Chicago but provides no dates of this shared residence. The declarant states they went to social functions together but does not give the frequency and the details about these social events. The declarant claims that they lived together until the applicant married in 1987.

In a declaration, [REDACTED] states that he met the applicant at a wedding reception through a mutual friend in 1986 and they sat together through the entire event. The declarant claims that he does not know where and how the applicant entered the United States. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period. In a letter, the declarant contradicts his previous declaration and states he met the applicant in 1982 at a building complex in Chicago where they lived and that they used to play and watch games together before they got married and became responsible to their spouses.

In a declaration, [REDACTED] states that he first met the applicant in June 1984 at a friend's house. The declarant claims that he does not know whether the applicant came to the United States before 1982. The declarant claims that he does not know where and how the applicant entered the United States. The applicant claims they socialized on a few occasions but does not give the frequency and the details about these social events. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period. In a letter, the declarant contradicts his previous declaration by saying he met the applicant at his job where they worked together in 1984. The declarant neither states the job nor the location.

In a declaration, [REDACTED] states that he met the applicant in June 1984 when he was having problems loading his ice cream truck and the applicant helped him out. The declarant states that they were leasing ice cream trucks from [REDACTED]. The declarant did not answer the question which states whether the applicant came to the United States before 1982. The declarant claims that he does not know where and how the applicant entered the United States. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

In a declaration [REDACTED] states that the applicant was his neighbor in Los Angeles in August 1987. The declarant claims that the applicant told him that he entered the United States before 1982. The declarant claims that he does not know where and how the applicant entered the United States. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period. In another declaration, the declarant states that during a conversation, the applicant told him that he came to the United

States in 1978, wanted to go to college but didn't have enough money, and that the applicant relocated from Chicago where he had filed an amnesty application in May 1987 that was rejected because he traveled outside the United States in 1984. The declarant states that they use to watch television games together.

In a declaration, [REDACTED] states that he met the applicant at a social gathering in the summer of 1982. The declarant claims that he does not know where and how the applicant entered the United States. The applicant claims they socialized and became neighbors. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

In a declaration [REDACTED] states that he met the applicant on March 3, 1987. The declarant claims that he does not know where and how the applicant entered the United States. The applicant claims they met at some social gatherings but does not give the frequency and the details about these social events.

In a letter, [REDACTED] states that he met the applicant in the summer of 1980 while visiting Philadelphia. The witness states that he has visited the applicant, his wife and children since he moved to California but gives no details as to when he moved to California, how frequently he visits, and the applicant's wife and children's names. The declarant does not give any other information about the applicant and the events surrounding their association during the requisite period.

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of affidavits submitted by the applicant. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. The AAO finds that the witness statements do not provide sufficient detail. In many of the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits/declarations and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite

period. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

The applicant submitted a copy of a lease agreement dated September 28, 1978 between [REDACTED] and the applicant for the first floor of a house in Philadelphia, Pennsylvania for one year. The applicant submits copies of two receipts for rent dated September 27, 1978 and December 29, 1978. The applicant submits copies of two letters dated December 20, 1978 and January 15, 1979. The applicant submits a copy of his bank identification card for Uptown National Bank and Bank of Chicago issued July 31, 1985 and August 15, 1985, respectively. The copy of the applicant's bank book from Uptown National Bank of Chicago shows dates of withdrawals from July 31, 1985 to August 16, 1985. Copies of some of the photos have dates during the requisite period but the individuals in the photos have not been identified. The IDs and other evidence serve to confirm the applicant was in the United States on that date, however, it does not establish continuous residence throughout the requisite period.

A form letter signed by [REDACTED] states that the applicant has been a registered member of the parish since November 1987. However, the applicant claims on his Form I-687 application that he became affiliated with the church in February 1993. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter does not state the dates of membership and the address where the applicant resided during membership. Given the discrepancy, the letter will be given no weight.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

The applicant claimed on his Form I-687 application that he traveled outside the United States to Nigeria due to the death of his grandmother from January 1984 to July 1984 and to Brazil and Nigeria to visit his family from January 1987 to July 1988. Absent an explanation or other evidence, the applicant has not established that his absence from the United States did not disrupt

any continuous residence in the United States, or that his absence was due to emergent reasons. "Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). Absent such evidence, the applicant has not shown that his absence from the United States did not disrupt his period of required physical presence and continuous residence in the United States.

In a statement, the applicant claims that he was in the United States during the amnesty application period in May 1987. The applicant claims that he visited the immigration office in Chicago in May 1987 and his application was rejected. The applicant states that he made an error when he indicated on his Form I-687 application that he left the United States in January 1987.

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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and 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 evidence of record, it is concluded that the applicant failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*. The applicant has not established that he did not disrupt his period of required physical presence and continuous residence in the United States. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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