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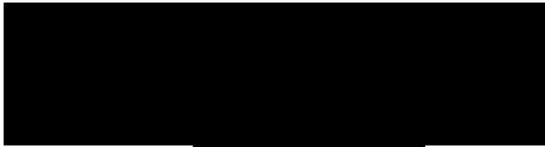
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-048-10474

Office: NEW YORK

Date: **AUG 15 2007**

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he has provided credible documentation and testimony in support of his application for temporary residence.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on November 17, 2005. Part 30 of this application requests the applicant to list his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED] Brooklyn, NY from October 1981 until June 1986 and [REDACTED] Brooklyn, NY from September 1986 until February 1991. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was a free lance construction work helper in Brooklyn, NY from November 1981 until February 1991. The information provided by the applicant indicates that he has resided in the United States during the requisite period; however this claim is not supported by credible and probative evidence.

The applicant submitted a letter from his purported former employer, Sunshine Restaurant Cuisine of India. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that:

Letters from employers should be on employer letterhead stationery if the employer has such stationery, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from Sunshine Restaurant does not meet the criteria delineated in the regulations. The letter from Sunshine Restaurant provides that the applicant was working at the restaurant as a handyman from January 1982 until May 1988. Notably, this letter is inconsistent with the applicant's Form I-687 application, which does not contain any information on the applicant's employment with Sunshine Restaurant. Instead, the applicant's Form I-687 provides that that he was a free lance construction work helper in Brooklyn, NY from November 1981 until February 1991. Additionally, this letter fails to provide the applicant's address during the time period of his purported employment. The letter also fails to explain whether the author has personal knowledge of the applicant's employment. Furthermore, the letter fails to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable.

The applicant submitted a copy of an invoice from [REDACTED] optometrist. This invoice is dated June 17, 1982 and is in the amount of \$81.00. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Therefore, this copied document alone is not probative evidence of the applicant's residence in the United States during the requisite period. It will be viewed within the totality of the evidence provided by the applicant.

The applicant submitted a letter from [REDACTED] General Secretary, Bangladesh Society Inc., New York. This letter provides that the applicant has been a member of the organization from April 1982 until March 1991. The letter states, "[h]e used to attend at the Club [sic] for the purpose of social activities, he also rendered his volunteer service to the charity of all religious and social activities among the Asian Community." The information regarding the applicant's activities with the Bangladesh Society is vague and lacks significant detail. The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches, unions or other organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establishes the origin of the information being attested to. This letter fails to follow these delineated guidelines.

The applicant submitted a notarized statement from Jitender [REDACTED] which provides, "I personally accompanied with [REDACTED] to [REDACTED] [sic] On August 1987 to submit an application I-687 for temporary Resident as a CSS Class Member under President Regan Amnesty Program to legalize in the USA [sic]." This statement from [REDACTED] is deficient in several respects. The letter fails to provide information on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period of continuous residence. Furthermore, the letter does not contain a phone number to contact Mr. [REDACTED] to verify his testimony.

Finally, the applicant submitted a "fill in the blank" notarized statement from [REDACTED] which provides that he has known the applicant from November 1981 until June 1986. [REDACTED] states that he knows the applicant from "social gathering, restaurant, market place." This statement provides that [REDACTED] has not seen the applicant for twenty (20) years. This statement from [REDACTED] is also deficient in several respects. The statement fails to provide information on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period of continuous residence. Furthermore, the letter does not contain a phone number to contact [REDACTED] to verify his testimony.

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 notarized statements provided by the applicant are not probative and credible based on the above noted deficiencies. The letter of employment from Sunshine Restaurant is inconsistent with the employment history stated on the applicant's Form I-687 application. The letter from the Bangladesh Society lacks significant detail on the author's knowledge of the applicant's membership. The letter from [REDACTED] is not an original document, therefore, it can only be afforded minimal value as corroborating evidence of the applicant's residence in the United States during the requisite period. 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 not demonstrated with relevant, credible and probative evidence that his claim is probably true.

Even if the applicant had established that he continuously resided in the United States during the requisite period, he could be ineligible and inadmissible to adjust status to temporary resident based on information in his record, which indicates that he has been charged with multiple criminal convictions. An applicant for temporary resident status must establish that he is admissible to the United States as an immigrant and has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An FBI report based upon the applicant’s fingerprints reveals that on October 21, 2001, he was arrested and charged with *assault in the second degree* in violation of section 120.05 of the New York Penal Law and *criminal possession of a weapon in the fourth degree* in violation of section 265.01 of the New York Penal Law. Section 120.00 of the New York Penal Law provides that *assault in the second degree* is a class D felony, which carries a sentence of imprisonment not exceeding seven years. Section 265.01 of the New York Penal Law provides that *criminal possession of a weapon in the fourth degree* is a class A misdemeanor, which carries a sentence of imprisonment not exceeding one year. The FBI report does not contain information on the final disposition related to these two charges.

The applicant submitted a court disposition which provides that he was arraigned on the charges of *assault in the third degree* in violation of section 120.00 of the New York Penal Law; *criminal possession of a weapon in the fourth degree* in violation of section 265.01 of the New York Penal Law; and *harassment in the second degree* in violation of section 240.26 of the New York Penal Law. Section 120.00 of the New York Penal Law provides that *assault in the third degree* is a class A misdemeanor, which carries a sentence of imprisonment not exceeding one year. Section 240.26 of the New York Penal Law provides that *harassment in the second degree* is a violation, which carries a sentence of imprisonment not exceeding fifteen (15) days.

The court disposition indicates that the charges against the applicant were dismissed by the Criminal Court of the City of New York on December 5, 2002. It should be noted that the applicant has only submitted a copy of the court disposition related to these charges. The court disposition states that it is not an official document unless embossed with the court seal over the signature of the court official. The applicant’s record does not contain such an official court disposition. Since this appeal will be dismissed on other grounds, this issue need not be examined further.

In conclusion, the absence of sufficiently detailed supporting documentation to corroborate the applicant’s claim of 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 applicant’s reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he 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 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.