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FILE: [REDACTED] MSC-05-153-10218

Office: NEW YORK

Date: DEC 12 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.

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. 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the evidence submitted was insufficient to overcome the grounds for denial explained in the Notice of Intent to Deny (NOID). Specifically, 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserted that everything stated in his application is true, and the affidavits he provided are true attestations. The affiants gave thorough explanations of how and where they met the applicant and provided contact telephone numbers and copies of identification. The applicant asked that the decision be reconsidered. He also submitted a second declaration provided by one of his prior declarants.

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).

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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 2, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses in Brooklyn, New York during the requisite period: [REDACTED] from 1982 to 1986 and [REDACTED] 1986 to 1996. It is noted that the applicant did not provide his place of residence in the United States prior to January 1, 1982. This calls into question whether the applicant resided in the United States prior to January 1, 1982. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant did not provide any information. At part #32 where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed only a family visit to Senegal from January 1991 to March 1991.

In support of his claim of continuous residence throughout the requisite period, the applicant submitted multiple documents. The only evidence that is relevant to the requisite period is a declaration from [REDACTED] dated December 29, 2005 but notarized December 30, 2005. In

his declaration, Mr. [REDACTED] stated that he met the applicant in Harlem, New York in 1981. Mr. [REDACTED] stated that the applicant resided from 1982 to 1986 at [REDACTED]. He failed to provide the applicant's address prior to 1982 or from 1986 to the end of the requisite period. Mr. [REDACTED] stated that he would see the applicant attend Friday prayer at a mosque in Harlem "some Fridays." This declaration is inconsistent with the information provided on Form I-687, where the applicant failed to list any affiliations or associations with mosques in the United States. In addition, this declaration fails to specifically confirm the applicant resided in the United States after 1986 until the end of the requisite period.

In response to the NOID issued February 1, 2006, the applicant submitted two declarations. These included a declaration from [REDACTED] dated February 20, 2006 but notarized February 21, 2006. Mr. [REDACTED] stated that he has known the applicant since 1981 and Mr. [REDACTED] was in the United [States] at that time. He also stated that he had included a copy of his identification and his cell phone number with his prior declaration. This declaration did not provide any additional information regarding the applicant's residence in the United States that was not included in Mr. [REDACTED] prior declaration.

The applicant also submitted a declaration from [REDACTED] dated February 17, 2006 but notarized February 19, 2006. In this declaration, Mr. [REDACTED] stated that he met the applicant in 1981 by a mosque in New York when he and the applicant both attended Friday service. Since that day, Mr. [REDACTED] saw the applicant at the mosque almost every Friday. Mr. [REDACTED] stated that, to his knowledge, the applicant was residing at [REDACTED] in Brooklyn from 1981 to 1986. This declaration is inconsistent with the information provided on Form I-687, where the applicant failed to list any affiliations or associations with mosques in the United States. In addition, this declaration fails to specifically confirm the applicant resided in the United States after 1986 until the end of the requisite period.

In denying the application, the director determined that the evidence submitted was insufficient to overcome the grounds for denial explained in the NOID. Specifically, 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. The director found that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. It is noted that the NOID stated that the applicant had testified at his asylum hearing on April 18, 2000, that he did not leave Senegal until 1989. The record indicates the applicant stated that the last time he left Senegal was in 1989, rather than that he first left Senegal in 1989. This statement is inconsistent with Form I-687, where the applicant listed a trip to Senegal in 1991 not mentioned in the asylum testimony yet failed to list an absence from the United States in 1989. However, these inconsistencies are found not to be relevant to the determination of whether the applicant continuously resided in the United States throughout the requisite period.

On appeal, the applicant asserts that everything stated in his application is true, and the affidavits he provided are true attestations. The affiants gave thorough explanations of how and where they met the applicant and provided contact telephone numbers and copies of identification. The

applicant asked that the decision be reconsidered. He also submitted a second declaration from Mr. [REDACTED] dated June 8, 2006. In this declaration, Mr. [REDACTED] stated that he has no pictures from his early years of acquaintance with the applicant. He also confirmed that his prior declaration was factual and sincere. This declaration provided no additional information regarding the applicant's residence in the United States.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted declarations from only two people concerning that period. The first declaration from Mr. [REDACTED] is inconsistent with the information provided on Form I-687. In addition, this declaration fails to provide address information for the applicant for the entire requisite period and fails to specifically confirm the applicant resided in the United States after 1986 until the end of the requisite period. The second declaration from Mr. [REDACTED] provides no additional relevant information. The first declaration from Mr. [REDACTED] is inconsistent with the information provided on Form I-687 and fails to specifically confirm the applicant resided in the United States after 1986 until the end of the requisite period. The second declaration from Mr. [REDACTED] provides no additional relevant information. Three of the four affidavits submitted by the applicant contain a date that does not match the notarization date, calling into question their authenticity. In addition, the applicant failed to indicate on Form I-687 that he resided in the United States prior to January 1, 1982.

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 contradictions between the applicant's statements on his applications and the statements of his declarants, and given his 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 for the requisite period 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.

The applicant was ordered removed from the United States on April 18, 2000. The removal decision of the immigration judge was affirmed by the Board of Immigration Appeals on October 7, 2002.

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