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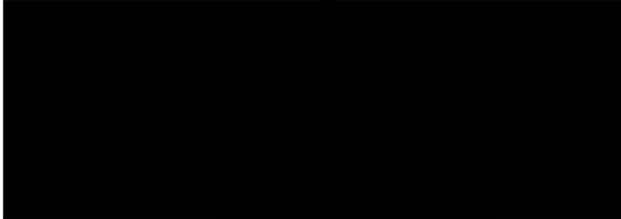
U.S. Department of Homeland Security
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U.S. Citizenship
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MSC-05-235-13695

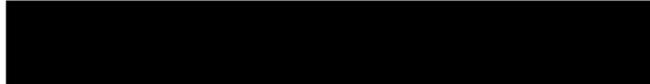
Office: CLEVELAND, OHIO

Date:

NOV 14 2007

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. 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, Cleveland, Ohio, and that decision 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. Specifically, the director found that the applicant failed to submit evidence apart from his own testimony that established that he had resided in the United States for the duration of the requisite period. In saying this, the director noted that in support of his application the applicant submitted two (2) attestations, one from [REDACTED] and the other from [REDACTED] both of whom stated that they first met the applicant in 1984 and 1983 respectively. 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 responds to the director's decision by providing updated attestations and an additional affidavit from the Pan African Islamic Society in an attempt to prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the

date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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).

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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 23, 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 showed his first address in the United States during the requisite period to be at [REDACTED] in Brooklyn, New York where he indicated he lived from March of 1981 until January of 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was never absent from the United States during the requisite period. At part #33 where he was asked to show his employment dating back to January 1, 1982, he showed his first employment to have been for Key Resources Inc. in Greensboro North Carolina where he indicated he worked from March 1999 to November of 2001. Notes in the record that appear to have been made by the Citizenship and Immigration Services (CIS) officer indicate that at the time of his interview the applicant also stated that he worked at Carol Carwash on Fulton Street and worked distributing newspapers and fliers at an unspecified location. There are no dates associated with this employment.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following:

- An unnotarized statement from [REDACTED] dated December 6, 2005, stating that [REDACTED] first met the applicant in August of 1983. He states that the applicant's father indicated that the applicant had been living in New York since January of 1981. It is noted here that the applicant indicated on his Form I-687 that he began residing in the United States in March of 1981. [REDACTED] states that he saw the applicant from time to time after this first meeting. He states that he cannot confirm that the applicant was physically present in the United States before 1983. Here, [REDACTED] does not state the frequency with which he saw the applicant during the requisite period. He further states that he did not know the applicant for the duration of that time. Therefore, very little weight can be given to this statement in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 25, 2005, that states that he has known the applicant since 1984 and that he has been in touch with him since that time. Here, the affiant does not say how or where he met the applicant. He does not provide an address at which it is personally known to him that the applicant resided. It is noted that the

applicant stated that he lived in Brooklyn for the duration of the requisite period on his Form I-687 and the affiant has shown his address to be in Cincinnati, Ohio. Because of its significant lack of detail and because this affidavit pertains to only a part of the requisite period, it cannot be afforded any weight in establishing that the applicant resided continuously in the United States for the duration of that period. Further, it can only be afforded minimal weight in establishing that the applicant resided in the United States during the requisite period.

While not noted by the director, it is noted here that though the applicant did not indicate that he was ever absent from the United States during the requisite period, the record contains his marriage certificate which indicates that the applicant was married in Niamey, Niger on November 14, 1987. The marriage certificate shows the applicant's address of residence at the time to be in Niamey, Niger. The existence of this document in the record indicates that the applicant was absent from the United States in November of 1987, casting doubt on whether he accurately and fully represented his absences from the United States on his Form I-687, where he showed his first absence to have been in January of 1989.

In denying the application the director stated that because of the insufficiency of the evidence submitted by the applicant, he did not meet his burden of proving by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document." If a legal conclusion of a director were to be made that an applicant could not meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

Here, however, as was previously stated, the attestations submitted by the applicant do not establish that he is eligible to adjust status to that of a Temporary Resident.

On appeal the applicant submits a new letter from [REDACTED] submits proof that [REDACTED] was in the United States during the requisite period and submits a statement from the Pan African Islamic Society.

The new statement from [REDACTED] reiterates that he has known the applicant since 1984. He goes on to say that he met the applicant through friends and to state that he is the applicant's landlord. He submits his birth certificate that shows he was born in the United States. However, as with the previous statement submitted by [REDACTED] this statement asserts that he has known the applicant since 1984 and not for the duration of the requisite period. Therefore, this

statement cannot be given any weight in establishing that the applicant entered the United States prior to January 1, 1982.

The letter from the Pan African Islamic Society states that the applicant studied the Koran from 1984 to 1986. Though this letter attests to the applicant's moral character, it does not offer proof that he entered the United States before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period.

The content of the revised statement from [REDACTED] is a duplicate of the previously [REDACTED] statement. However, this statement is notarized and was submitted with proof of [REDACTED] identity. Because this statement only establishes the applicant's presence in the United States since 1983, it cannot be given any weight in establishing that the applicant entered the United States prior to that date.

As is stated above, 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). In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three (3) people, none of which indicate that the applicant resided continuously in the United States for the duration of that period. Therefore, he has not established by a preponderance of the evidence that he resided in the United States for the duration of the requisite period.

The absence of sufficiently detailed 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 that do not pertain to the duration of the requisite period, and given the inconsistencies found in evidence in the record, 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.