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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK Date: OCT 01 2007

MSC 05 300 11900

IN RE: Applicant: WILLIAM BONDZIE

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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, counsel asserts that due weight was not accorded to the affidavits the applicant submitted to corroborate his claim of continuous residence in the United States throughout 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).

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. *See* 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 27, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [redacted] New York" from July 1981 to December 1992. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he had worked as a self-employed cab driver in New York since November 1981.

During his interview with a CIS officer, the applicant stated that he first entered the United States from Canada without inspection in 1981. When the CIS officer asked the applicant what type of work he performed during the requisite period, the applicant stated that he worked part-time as a tailor for three years, from 1981 through 1984, and subsequently drove a cab for 15 years.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a fill-in-the-blank affidavit dated December 14, 2005, from , a resident of Bronx, New York. stated that stated that he became acquainted with the applicant when he began dating the applicant's sister. indicated that the applicant resided at York, New York" from July 1981 to December 1982. However, did not provide any information as to when he first met the applicant or the frequency of his contact with the applicant during the requisite period.

The applicant also submitted a fill-in-the-blank affidavit dated December 12, 2005, from resident of New Jersey. stated that he met the applicant "at an outdooring for an African chief who was visited [sic] the U.S.A." indicated that the applicant resided at " New York" from July 1981 to December 1992. However, did not provide any information as to when he met the applicant or the frequency of his contact with the applicant during the requisite period.

On April 11, 2006, the district director informed the applicant of her intent to deny his application because he failed to submit sufficient evidence to corroborate his claim of continuous residence throughout the requisite period. The district director specifically noted that the applicant stated during his interview that he worked part-time as a tailor from 1981 to 1984 and drive a cab for the next 15 years. The district director stated that this statement contradicted the applicant's statement on the Form I-687 that he had worked as a self-employed cab driver since November 1981. The district director noted that the applicant made no mention of having worked part-time as a tailor from 1981 to 1984 on the Form I-687. The district director granted the applicant 30 days to address the contradiction in the applicant's claimed employment during the requisite period and submit additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The notice was mailed to the applicant in care of counsel, but the record does not contain a response from the applicant or from counsel.

The district director denied the application on June 9, 2006, because the applicant failed to respond to the notice of intent to deny by submitting additional evidence to corroborate his claim of continuous residence in the United States during the requisite period or to overcome the contradiction noted in the notice of intent to deny.

On appeal, counsel asserts that due weight was not accorded to the affidavits attesting to the applicant's residence in the United States during the requisite period. However, counsel does not submit any additional evidence to corroborate the applicant's claim, nor does he address the contradiction noted by the district director in the notice of intent to deny.

Counsel's assertion on appeal is not persuasive. 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 two people concerning that period, both of which lack relevant and specific detail to corroborate the applicant's claim.

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 contradictory statements on his application and during his interview and 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 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.