



U.S. Citizenship
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FILE:

MSC 04 296 10384

Office: NEW YORK

Date: SEP 11 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, New York, 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 he has lived in the United States since 1981 and provides additional documentation to support his claim.

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.

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

1. A declaration from [REDACTED] claiming that he first met the applicant in 1984 by virtue of having lived in the same New York City borough as the applicant. It is noted that [REDACTED] failed to indicate the applicant's specific residences in the United States during his acquaintance with the applicant.
2. A declaration from [REDACTED] claiming that he first met the applicant in 1981 when the applicant was sharing a residence with [REDACTED] friend. [REDACTED] provided no further information about any of his purported interactions with the applicant or the frequency of those interactions.
3. A declaration from [REDACTED] claiming that he first met the applicant in 1981 when the applicant was sharing a residence with [REDACTED] friend. [REDACTED] provided no further information about any of his purported interactions with the applicant or the frequency of those interactions.

4. A declaration from [REDACTED] claiming that he first met the applicant in 1981 at a grocery store. [REDACTED] provided no further information about any of his purported interactions with the applicant or the frequency of those interactions.
5. A declaration from [REDACTED] claiming to have met the applicant in New York before January 1982. [REDACTED] provided no details regarding the specific place and date of his first interaction with the applicant, nor did he provide any information discussing the nature of his relationship with the applicant or the frequency of their purported interactions.
6. A mostly blank form declaration from [REDACTED] who provided only information about his own residence and status in the United States. [REDACTED] did not provide any information about the applicant's residence in the United States, the nature of his relationship with the applicant, or the frequency of his interactions with the applicant, if any.
7. A declaration from [REDACTED] claiming to have met the applicant in New York in September 1985 when the applicant accompanied a friend of [REDACTED] during a visit. [REDACTED] described the applicant as his "well wisher," but provided no information regarding the nature of his relationship with the applicant or the frequency of their purported interactions.
8. A declaration from [REDACTED] claiming to have met the applicant in New York in December 1984 when he went to visit the applicant at his home. [REDACTED] claimed that he knew of the applicant's residence in the United States prior to January 1982 through the applicant's family. [REDACTED] described the applicant as his "well wisher," but provided no information regarding the nature of his relationship with the applicant or the frequency of their purported interactions.
9. A declaration from [REDACTED], a Florida resident, claiming to have met the applicant when the applicant came to stay with him in Florida "for days back in 1982." It is noted that [REDACTED] claimed to have met the applicant in 1981, but referred to their meeting in 1982. Additionally, [REDACTED] provided no information about his own residential addresses in the United States as requested in No. 11 of the declaration. [REDACTED] described the applicant as his "well wisher," but provided no information regarding the nature of his relationship with the applicant or the frequency of their purported interactions.
10. A declaration from [REDACTED] claiming to have met the applicant in New York at a community gathering in 1980. Although [REDACTED] provided a statement with regard to the applicant's employment from April 1986 to October 1991, the place identified is not legible. [REDACTED] provided no information regarding the

nature of his relationship with the applicant or the frequency of their purported interactions.

11. A declaration from [REDACTED] claiming to have met the applicant in July 1981 when the applicant accompanied a friend of [REDACTED] during a visit. [REDACTED] claimed that he lived with the applicant from 1986 to 1989 at [REDACTED]
12. A declaration from [REDACTED] claiming to have met the applicant in 1980 when the applicant came to [REDACTED] home looking to share a residence with him. Mr. [REDACTED] provided no information regarding the nature of his relationship with the applicant or the frequency of their purported interactions.
13. A copy of a check dated October 3, 1982 from Sarwar Construction made out to the applicant for \$45.
14. A photocopied envelope date stamped December 2, 1982 addressed to the applicant at 1228 Fulton St.
15. A notarized letter dated May 18, 2004 from [REDACTED] who claimed to be the applicant's dentist since February 3, 1983. While [REDACTED] claimed to have known the applicant since 1980, he did not claim that he had a relationship with the applicant other than in his capacity as the applicant's dentist. As such, his knowledge of the applicant's presence in the United States in 1980, three years prior to the time the applicant purportedly started seeing [REDACTED] as his dentist, is unclear.
16. An employment affidavit dated July 16, 2004 from Md. [REDACTED], president of [REDACTED] Construction, claiming that the applicant worked for the company from April 1986 to October 1991.
17. An employment affidavit dated July 2, 2004 from [REDACTED] claiming that the applicant worked for [REDACTED] since March 1984. The affiant claimed to have known the applicant since 1980, but did not explain the circumstances of their initial interaction. The affiant also did not explain his own position with S&S Construction and, therefore, failed to establish his authority to vouch for the applicant's employment with the company.
18. A letter dated July 12, 2004 from [REDACTED] of the Islamic Council of America, Inc., claiming that he has known the applicant since 1982 and has seen the applicant attend various prayer services at the mosque. [REDACTED] failed to identify his position with the non-profit organization.

19. A letter dated July 15, 2004 from [REDACTED], the general secretary of Bangladesh Society, Inc., claiming that the applicant has been a member of the said organization since June 1984.
20. A notarized statement from [REDACTED] claiming to have known the applicant since 1981. [REDACTED] stated that the applicant lived with him in Florida for approximately one month in 1982.
21. An altered affidavit dated July 6, 2004 from [REDACTED]. The affiant stated that the applicant has resided in the United States since September 1980 and claimed that the applicant lived in Florida for one month. Some of the information has been crossed out and replaced with different information, which now suggests that the applicant lived in Georgia for less than one month upon his arrival to the United States. Prior to the alteration, the affidavit indicated that the applicant lived in Florida for less than one month. The affiant further stated that the applicant shared a room with him until April 1984. It is also noted that the "4" in 1984 has also been altered to show 1984. It is unclear who made these changes and why.
22. A photocopied receipt from [REDACTED] made out to the applicant and dated July 7, 1982. Although it appears that the customer's phone number was provided to Madison Cleaners, the numbers are illegible.
23. A letter dated October 1, 1987, signed by [REDACTED] who identified himself as the assistant secretary at the Islamic Council of America, Inc. [REDACTED] claimed to have known the applicant since 1980 and discussed his knowledge of the applicant's departure from the United States from February 25, 1985 to March 29, 1985.
24. A letter dated May 12, 1987 from [REDACTED] claiming that the applicant was his patient since April 10, 1982, the date of his first office visit. [REDACTED] provided the dates of five additional office visits from 1983 to 1987.
25. A letter dated April 5, 2004 from [REDACTED] of Islamic Council of America, Inc., claiming that he was the imam of [REDACTED] from 1982 to 1986 where the applicant attended various prayer services.
26. A sworn affidavit dated April 6, 2006 from [REDACTED] claiming to have known the applicant since 1981. Although he identified the address of his first meeting with the applicant, he did not describe the circumstances of that meeting nor discuss the nature of their relationship or any other facts about the applicant that are relevant to the applicant's residence during the statutorily required time period.

27. An affidavit dated April 4th from [REDACTED] claiming to have known the applicant since 1984. He stated that his first encounter with the applicant was at [REDACTED] where the affiant resided at the time. The affiant did not describe the circumstances of his first encounter with the applicant and did not discuss the nature of their relationship or any other facts about the applicant that are relevant to the applicant's residence during the statutorily required time period.
28. An affidavit dated April 4th from [REDACTED] claiming to have known the applicant since September 1980. He stated that the applicant shared a residence with him at [REDACTED] 1980 to 1984.
29. An affidavit dated April 7, 2006 from [REDACTED] claiming to have known the applicant since 1981. The affiant stated that his first encounter with the applicant took place at [REDACTED], but did not provide the details of that meeting or other facts about the applicant that are relevant to the applicant's residence during the statutorily required time period.

On March 24, 2006, the director issued a notice of intent to deny addressing the various documents submitted by the applicant in an attempt to establish his residence in the United States during the relevant time period. The director specifically discussed the applicant's responses given at an interview with a service officer and concluded that several of the applicant's responses were inconsistent with information provided by the applicant in his Form I-687 application. The director further stated that the applicant provided no evidence of his entry to the United States via sea port and provided affidavits that are not amenable to verification. The director also noted the lack of dental records to corroborate [REDACTED] statement and commented on the applicant's failure to provide the original envelope (discussed in No. 14 above) in order to verify its validity.

In response, the applicant provided a statement dated April 17, 2006 attempting to address the director's various comments. The applicant claimed that any indication that he entered the United States for the first time in 1985 is merely a typographical error. The applicant maintained his claim of residence in the United States since 1980 and called the director's attention to the affidavit from [REDACTED] who provided information of the applicant's claimed residence from September 1980 to April 1984.

On July 18, 2006, the director issued a final notice denying the applicant's Form I-687 application. The director reiterated the insufficiency of the affidavits provided by the applicant, stating that neither the information claimed in the affidavits nor the U.S. presence of the affiants during the relevant time period can be verified.

On appeal, the applicant resubmitted the declaration of [REDACTED] and provided photocopies of the front page of four different lease agreements naming [REDACTED] as a tenant. This submission appears to be an effort on the part of the applicant to establish the whereabouts of Mr. [REDACTED] who made various claims on behalf of the applicant with regard to the applicant's residence in

the United States. However, none of the lease agreements were submitted in their entireties, as none were accompanied by their respective signature pages to show that the lease was fully executed. Additionally, the lease for the 1981/1982 one-year term appears to have been altered as apparent by the fact that various words were covered up in the process of making the photocopy and are therefore entirely missing from the document. With regard to the lease for the 1982/1983 one-year term, [REDACTED] seemingly leased a different residence with another landlord. However, the lease form and typed lettering are identical in both documents. Thus, in addition to the fact that all four documents lack sufficient documentation to show that they were actually executed and were valid during their respective lease terms, at least one of the documents appears to have been altered. Furthermore, [REDACTED] declaration itself, aside from its lack of verifiability, also appears to have been altered. Specifically, the dates [REDACTED] claimed to have resided with the applicant, i.e., from 1986 to 1989, were altered. Prior to such alteration, the declaration stated that the applicant resided with [REDACTED] from 1986, which was likely altered, to 1989, which read 1988 prior to the alteration. The applicant neither acknowledges the alteration nor provides an explanation for why the document was altered and by whom.

In summary, the record contains no credible contemporaneous evidence to account for the applicant's residence during the statutorily relevant time period and is filled with sworn statements and declarations, which are either not amenable to verification or are contradicted by the applicant's own claims.

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-*. 20 I&N Dec. 77. 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.