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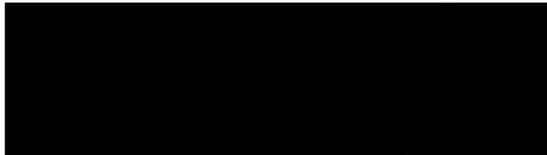
U.S. Department of Homeland Security
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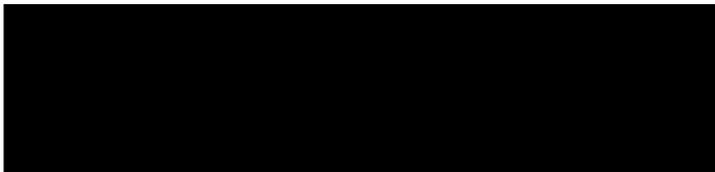
FILE: [Redacted] Office: Detroit
MSC 05 151 10331

Date: **SEP 13 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:



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

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates the applicant's claim of residence in the United States since prior to January 1, 1982. Counsel asserts that any discrepancy in the applicant's testimony relating to his residence in this country during the requisite period at his interview was the result of miscommunication between the interviewing officer, the translator, and the applicant.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 February 28, 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 claimed that he resided at [REDACTED] in

New York, New York from May 1981 to October 1986 and [REDACTED] in New York, New York from October 1986 through at least the date of the termination of the original legalization application period on May 4, 1988. Further, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., in the United States, the applicant listed [REDACTED] in New York, New York from May 1983 to October 1995 and [REDACTED] Community in New York, New York from November 1989 through the present.

In support of his claim of continuous residence 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 from May 5, 1987 to May 4, 1988, the applicant submitted a letter dated July 12, 1989, containing the letterhead of the [REDACTED] at [REDACTED] that is signed by [REDACTED] who listed his position as "Public Information." [REDACTED] stated that the applicant is member of the [REDACTED] who has been attending prayer services at the [REDACTED] since 1981. However, [REDACTED] failed to attest to any of the applicant's addresses of residence during the entire period that the applicant was affiliated with this religious organization beginning in 1981 as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant provided a letter containing the letterhead of [REDACTED] Community in America at [REDACTED] in New York, New York that is dated February 2, 2005. This letter is signed by [REDACTED] who listed his position with this organization as "Permanent Secretary." [REDACTED] stated that the applicant was a member in good standing of this organization since 1989. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to May 4, 1988. In addition, [REDACTED] failed to include the applicant's address of residence during that period that he was a member of [REDACTED] in America as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant included photocopies of two receipts that are dated October 22, 1984 and November 10, 1984 respectively, which each reflect his payment of a week's rent for [REDACTED] at the [REDACTED]

The applicant submitted photocopies of two receipts that are dated July 7, 1987 and July 15, 1987 respectively, which each reflect his payment of a week's rent for [REDACTED] at the [REDACTED] New York.

The record shows that the applicant subsequently appeared at the CIS office in Detroit, Michigan for an interview relating to his Form I-687 application on January 4, 2006. The record further shows that the applicant was accompanied by an acquaintance who acted as an interpreter during the interview in both English and the applicant's native language of Wolof. The notes of the interviewing officer reflect that the applicant testified under oath that he entered the United States for the first time in October 1984 when he arrived in New York City with a business visa

that had originally been issued in [REDACTED]. The record reflects that the applicant and the acquaintance acting as interpreter both acknowledged the applicant's testimony by signing the notes of the interviewing officer. The applicant's testimony that he first entered the United States in October 1984 directly contradicted his claim to have continuously resided in the United States since prior to January 1, 1982.

Upon the conclusion of his interview on January 4, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988 and his testimony during his interview. The applicant was granted thirty days to respond to the notice.

It is noted that the record contains a letter that is dated January 9, 2006 with the letterhead of the [REDACTED] which is signed by [REDACTED] and is addressed to the interviewing officer. In his letter, [REDACTED] stated the following:

As per our telecom, this is certifying that we do not recognize any letter by any person stating that any individual was a member of this community prior to 1993.

The present administration has been in office since 1993. Since that time our organization hosted several African Organization and groups under our umbrella.

We cannot vouch for the authenticity of any one who is a regular attendee prior to 1993.

Rawiyah Khatib is not presently a member of our organization.

It is further noted that the record reflects that the interviewing officer subsequently faxed an inquiry dated January 11, 2006 to [REDACTED] Community in America at [REDACTED], New York regarding the authenticity of the letter dated February 2, 2005 from this organization that the applicant had submitted in support of his Form I-687 application. In response, the treasurer of [REDACTED] in America, [REDACTED], provided a letter dated January 13, 2006 in which he stated:

As per the facsimile transmission you have sent to our organization, [REDACTED] in America [REDACTED], and dated January 11, 2006 we are hereby responding to your request to testify on the authenticity of certain "types of letters [you] are receiving with certain applications."

Indeed, the types of letters you are referring to and which you have sent us a copy are fraudulent. They are by no means endorsed or sponsored by our organization.

The person who signed this letter in the name of [REDACTED] is not the permanent secretary of our organization and never has been so.

In his subsequent response to the notice of intent to deny, the applicant submitted an affidavit that is signed by [REDACTED] provided a listing of the applicant's addresses of residence in the United States since May 1984 and stated the following in reference to the applicant, "She is one of my good friends. She is a great person."

The applicant included an affidavit signed by [REDACTED] who noted that the applicant's addresses of residence in this country since May 1984. [REDACTED] declared, [REDACTED] is a fine young lady. Her character is very outgoing/ambitious. I have known her for 25 years."

The two affidavits signed by [REDACTED] and [REDACTED], respectively, lack credibility as both affiants misidentified the applicant's gender by identifying him as a woman rather than a man. Additionally, neither of these affiants attested to the applicant's residence in the United States during that period from prior to January 1, 1982 through to May of 1984.

The applicant provided a photocopy of a letter dated January 10, 2006 containing the letterhead of the [REDACTED] that is signed by [REDACTED] who once again listed his position with this organization as "Public Information." It must be noted that this is the same individual who had previously testified that the applicant is member of the Muslim community who attended prayer services at the [REDACTED] since 1981 in a letter that the applicant included with the original filing of the Form I-687 application on February 28, 2005. However, in this new letter, [REDACTED] contradicted his prior testimony by declaring that the applicant is member of the Muslim community who had been attending prayer services at the [REDACTED] since December 1984. Neither the applicant nor Mr. [REDACTED] advanced any explanation for the contradictory testimony offered by [REDACTED] relating to the purported date the applicant began attending prayer services at the [REDACTED]. Additionally, [REDACTED] failed to attest to any of the applicant's addresses of residence during the entire period that the applicant was affiliated with this religious organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the ability of [REDACTED] to attest to any information relating to the [REDACTED] has been called into question as [REDACTED] declared in his letter dated January 9, 2006 that "[REDACTED] is not presently a member of our organization."

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on February 1, 2006.

On appeal, counsel reiterates the applicant's claim of residence in the United States since prior to January 1, 1982. Counsel asserts that any discrepancy in the applicant's testimony relating to his residence in this country during the requisite period at his interview was the result of miscommunication between the interviewing officer, the translator, and the applicant. In support

of this assertion, the applicant provides his own statement in which he contends that he first entered the United States in 1981 by crossing the border in the woods without inspection from Canada to Minnesota. The applicant contends that he testified that he first entered this country in October 1984 with a visa at his interview on January 4, 2006 because his interpreter had posed the question to him as "When did you first enter this country with a visa?" rather than "When did you first enter this country?" However, neither counsel nor the applicant provides any independent evidence, such as a statement or affidavit from the acquaintance who acted as the applicant's interpreter at the interview, which would tend to corroborate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The absence of sufficient supporting documentation and the existence of contradictory testimony relating to the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of this claim. Further, the credibility of the applicant's claim of residence in the United States from prior to January 1, 1982 is further impaired by the fact that applicant himself provided direct testimony that he did not enter this country until October 1984. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's failure to provide sufficient credible evidence to corroborate his claim of residence, the contradictory nature of the evidence contained in the record, and the applicant's conflicting testimony, 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 as required under section 245A(a)(2) of the Act. 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.