



U.S. Citizenship
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Services

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[REDACTED]

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FILE: [REDACTED]
MSC-04-328-10282

Office: NEW YORK

Date: **SEP 14 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:

[REDACTED]

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

The director determined the applicant failed to submit credible documents constituting a preponderance of evidence as to his residence in the United States during the statutory period. As a result, she denied the application.

On appeal, the applicant attempted to explain his lack of documentation based on the fact that he was a minor when he entered the United States. He also attempted to address concerns the director had regarding specific evidence provided by the applicant.

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 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 applicant 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 applicant 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 and 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) 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 Citizenship and Immigration Services (CIS) on August 23, 2004. 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 to be at [REDACTED] Brooklyn, New York from November 1980 until January 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant showed his first employment in the United States to be as a salesman with Mela Video & Audio Corp. from December 2000 to March 2003. The applicant initially provided no documentation in addition to the Form I-687 to support any aspect of his claim of continuous unlawful residence.

In response to a Notice of Intent to Deny (NOID) issued on February 21, 2006, the applicant reiterated his claim of continuous presence in the United States during the requisite period; requested that an error be corrected with regard to the date of his interview with an immigration officer; and explained his difficulty in providing evidence due to the fact that he was a minor when he entered the United States. The applicant also submitted multiple documents. In her affidavit, [REDACTED] identified herself as the applicant's mother. She stated that she and the applicant went to New York in 1980 and in 1987. [REDACTED] also explained that she and the applicant came back to Bangladesh to see her sick husband in June 1987 and returned to New York in July 1987. This affidavit does not provide specific information regarding the applicant's place of residence during the requisite period, such as his addresses. Nor does the affidavit specifically verify that the applicant resided continuously in the United States throughout the requisite period. Considering that the affiant is the applicant's mother and claims to have accompanied the applicant during his stay in the United States, it is reasonable to expect

that she would be able to provide significant detail. As a result, this affidavit is found to be lacking in detail.

The applicant also provided a form affidavit from [REDACTED]. This affidavit states that the affiant met the applicant in Brooklyn, New York in October 1981 and that the affiant and the applicant are very good friends. In addition, the affiant stated that the applicant was continuously present from January 1982 to May 1988. This affiant failed to provide information regarding the applicant's specific residences during the requisite period. As a result, it is found to be lacking in detail. Although not required, the affiant also failed to provide evidence of his presence in the United States during the requisite period. It is noted that [REDACTED] who identified herself as a notary public in New York, notarized the affidavit. A search conducted on the website of the New York Department of State Division of Licensing Services website shows that there is no notary in New York State licensed under the name [REDACTED] or the name [REDACTED]. New York Department of State, Division of Licensing Services, *Licensee Name Search*, http://appsext8.dos.state.ny.us/licns_public/lic_name_search_frm (last updated August 10, 2007). This calls into question the authenticity of the affidavit from [REDACTED].

The applicant also provided a form affidavit from [REDACTED]. This affidavit states that the affiant met the applicant with the applicant's mother in May 1981 and that the affiant and the applicant are very good friends. In addition, the affiant stated that the applicant was continuously present from January 1982 to May 1988. This affiant failed to provide information regarding the applicant's specific residences during the requisite period, or other relevant details. As a result, this affidavit is found to be lacking in detail. Although not required, the affiant also failed to provide evidence of his presence in the United States during the requisite period. It is noted that [REDACTED] also notarized this affidavit. Again, the fact that [REDACTED] is not listed as a licensed notary in New York calls into question the authenticity of this affidavit.

The applicant also provided a form affidavit from [REDACTED]. This affidavit states that the affiant met the applicant in Brooklyn, New York with the applicant's mother in June 1981 and that the affiant and the applicant are very good friends. In addition, the affiant stated that the applicant was continuously present from January 1982 to May 1988. This affiant failed to provide information regarding the applicant's specific residences during the requisite period. As a result, it is found to be lacking in detail. Although not required, the affiant also failed to provide evidence of his presence in the United States during the requisite period. It is noted that [REDACTED] also notarized this affidavit. Again, the fact that [REDACTED] is not listed as a licensed notary in New York calls into question the authenticity of this affidavit.

The applicant also provided an affidavit from [REDACTED]. This affidavit confirms the applicant's current address, and explains that the applicant was living with the affiant at [REDACTED] Brooklyn, New York from November 1980 to January 1991. The affiant also explained that he was supporting the applicant's expenses during the time of stay. The affidavit provides no information regarding the manner in which the applicant became acquainted with the affiant. The affiant also provides no reason, such as the existence of a family relationship, to explain the affiant's provision of support to the applicant for 11 years. As a result, this affidavit is found to be

lacking in detail. Although not required, the affiant also failed to provide evidence of his presence in the United States during the requisite period. It is noted that [REDACTED] also notarized this affidavit. Again, the fact that [REDACTED] is not listed as a licensed notary in New York calls into question the authenticity of this affidavit.

Lastly, the applicant provided a letter from [REDACTED], dated March 1, 1984. In this letter, [REDACTED] explained that the applicant has been his patient since March 10, 1981. The letter was printed on letterhead listing an address in Brooklyn, New York. It is noted that the record contains information from the website of the New York State Education Department, Office of the Professions. This information indicates that [REDACTED] was not licensed in New York State until November 6, 1981. New York State Education Department, Office of the Professions, *Licensee Information*, <http://www.nysed.gov/coms/op001/opscr2?profcd=50&plicno=036341> (last updated August 15, 2007). This calls into question the veracity of the letter from [REDACTED] and, as a result, it calls into question whether the applicant actually resided in the United States during the statutory period.

The applicant also provided photocopies of two envelopes addressed to him in the United States. These envelopes are found not to confirm the applicant's residence at a particular time because their cancellation date stamps are illegible.

In denying the application the director found the affidavit from the applicant's mother to be unpersuasive because it is from Bangladesh and is not amenable to verification in the United States. The director found the additional four affidavits to be not credible because they are all notarized by [REDACTED] who is not registered as a notary public in New York, as claimed. The director also found the letter from [REDACTED] to be not credible because [REDACTED] did not become licensed in New York until after the date he purportedly began treating the applicant. The director found the photocopies of envelopes not amenable to verification because they were post marked in a foreign country. In addition, the director noted that the date stamps on the envelopes are illegible.

On appeal, the applicant explained his lack of documentation due to the fact that he was a minor when he entered the United States. The applicant also stated that all the affiants have known the applicant since the statutory period and are willing to confirm their statements. The applicant also explained that, since he is not related to the affiants, their affidavits have great probative value. The applicant addressed the issue of the credibility of [REDACTED] letter only by stating, "[a]s the affidavit from him was issued on March 1984 and was stated by him that I became his patient in March 1981. Actually, it is not even in my memory unless I see the letter." The applicant also stated, "[t]hat, the Service might have mistaken regarding [REDACTED] DDS and the date he started his practice." This explanation is found to be unreasonable under the circumstances. The applicant failed to explain how this dentist could credibly confirm treating the applicant as a patient during a time in which the dentist was not yet licensed to practice medicine. The applicant also failed to provide additional evidence to overcome the licensing information obtained by the director, such as conflicting licensing information showing [REDACTED] actually was licensed during the time in question. The applicant also addressed the issue of [REDACTED] "who is a licensed Notary public in New York state according to her Notary Public license as far as I know." This explanation is also found to be unreasonable under the circumstances. The applicant failed to provide any additional evidence confirming [REDACTED]

status as a notary. As a result, the applicant has failed to overcome the questions the director raised regarding the credibility of the affidavits notarized by [REDACTED]

It is noted that the applicant claims to have entered the United States in November 1980 when he was approximately seven years old. However, the applicant provided no records of school attendance in the United States and provided no explanation for his failure to attend school while he was in the United States as a child. In addition, the applicant indicated he did not begin working in the United States until he was approximately 27 years old. The record contains no information regarding the applicant's activities in the United States during the requisite period. The lack of school records or indication that the applicant was employed as an alternative to attending school calls into question whether the applicant actually resided in the United States throughout the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, since the photocopies of envelopes he provided contain illegible date stamps. He has submitted affidavits that lack sufficient detail or are notarized by an individual not licensed as a notary and thus have questionable credibility. Specifically, the affidavit provided by the applicant's mother [REDACTED] lacked sufficient detail. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail and were notarized by [REDACTED], who is not licensed as a notary. The letter from [REDACTED] confirms the applicant was a patient of [REDACTED] during a time when [REDACTED] did not hold a medical license, and the applicant failed to adequately explain this inconsistency. Lastly, despite having arrived in the United States at the age of seven, the applicant provided no school documentation and no indication he was employed as an alternative to attending school.

The absence of sufficiently detailed and consistent 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 lack of detail contained in the applicant's supporting affidavits and given the inconsistencies between the provided documentation and licensing information from official sources, it is concluded that the applicant 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.