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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: FEB 25 2008

MSC 05-230-11698

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: SELF-REPRESENTED

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director's decision was unjustified, unfair, and baseless. He also asserts that he has submitted a number of affidavits and employment attestations sufficient to establish his eligibility for temporary residence status.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must 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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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. *See* CSS Settlement Agreement paragraph 11 at page 6 and Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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

- An affidavit from [redacted] in which he stated that he has known the applicant since October of 1981 when he met him at his brother's restaurant, [redacted] Restaurant. He also stated that the applicant worked at the restaurant on Saturdays and Sundays, and at Burger King, where the affiant was the assistant manager, on Fridays, Saturdays, and Sundays.

- An affidavit from [redacted] in which he stated that he met the applicant when he and his father came to the United States on August 22, 1981. He also stated that he employed the applicant at his grocery store, the Indian Supermarket Inc., from September 4, 1981 to November 7, 1986, and that in the beginning the applicant worked 3 to 4 hours a day without pay.

- A letter from the district manager of Burger King in which he indicated that the Creative Foods Corporation, a franchise of Burger King, employed the applicant from December 10, 1981 to March 30, 1982.

- A letter from the president of the Jackson Heights, New York Burger King in which he stated that the applicant was employed at one of the Burger King Stores from December 10, 1981 to March 30, 1982, as a part-time worker, and that his address of record was [redacted], Flushing, New York.

- A letter from the owner of n which he stated that he employed the applicant from October 13, 1981 to December 5, 1981.

- A letter from the president of the Indian Super Market located in Flushing, New York, in which he stated that the applicant was employed as a part-time helper from September 4, 1981 to November 7, 1986.

- A letter from the general manager of the Prince of India Restaurant Inc. in which he stated that the restaurant employed the applicant as a waiter from March 7, 1986 to December 3, 1992.

The letters do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the address(es) where the applicant resided throughout the claimed employment periods, nor do they indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarants. It is noted that the applicant stated under oath during his interview with the immigration officer on March 10, 2006, that he left the United States for approximately 1 year in 1986 and returned in 1987, and that during his absence from the country he did not work.

The applicant submitted the following attestations:

- A letter from in which he stated that the applicant has been a permanent member of the Islamic organization since 1982 and that he has known the applicant personally since becoming imam in 1984.

- A letter from n which he stated that the applicant is a member of . and that he has been acquainted with him at the Mosjid since 1985.

The letters do not conform to regulatory standards for attestations by churches. Specifically, the letters do not show inclusive dates of membership, the declarants do not state the address where the applicant resided during his membership, nor do the declarants establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). In addition, the dates of membership are not prior to January 1, 1982, and therefore, are insufficient to establish the applicant's residence during that period.

The applicant also submitted affidavits from , and in which they stated that they have known the applicant since August of 1981. Although the affiants attest to the applicant's presence in the United States in August of 1981, there has been insufficient evidence submitted to demonstrate a continuous relationship with the applicant throughout the requisite period.

It is further noted that the record of proceedings shows that the applicant was 14 years old when he arrived in the United States, however he has failed to provide school records or medical records to corroborate his claim of residence in the country.

In denying the application the director noted that the evidence submitted by the applicant was insufficient to overcome the grounds for the denial noted in the Notice of Intent to Deny.

On appeal, the applicant states that he has submitted numerous affidavits from friends, employers, and roommates sufficient to support his contention that he has been present in the United States throughout the requisite period. The applicant did not submit any additional evidence.

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). However, the applicant has not provided sufficient contemporaneous evidence of residence in the United States relating to before January 1, 1982 through the time of filing, and has submitted attestations from people concerning the requisite time period, the totality of which were not sufficient evidence to prove by a preponderance of the evidence that he resided continuously 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 contradictory statements on his applications 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 for the requisite period 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.

Beyond the decision of the director, the applicant has failed to establish that he 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). The regulations clarify that the applicant must 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). The record of proceedings shows that the applicant attempted to file his application in April of 1988. The record also shows that the applicant stated, under oath, during his interview with the immigration officer that he was absent from the United States for approximately 1 year from 1986 to 1987. There is no evidence to demonstrate that the applicant's one-year absence was brief, causal, or innocent. Consequently, the application will also be denied for this reason.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.