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

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FILE: [REDACTED]
MSC-05-228-10889

Office: NEW YORK

Date: JAN 09 2008

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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS). 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. Specifically, the director noted that the evidence submitted by the applicant was not sufficient to meet his burden of proof. She went on to say that his record contained a Form I-589 Application for Asylum and Withholding of Deportation that he submitted on June 5, 1995. On this Form I-589, the applicant stated that he entered the United States on September 9, 1992, which was not consistent with what the applicant showed on his Form I-687, where he showed that he was present in the United States for all of 1992. The director denied the application as 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 submits an additional affidavit in support of his application.

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 to the Immigration and Naturalization Service (the Service, now Citizenship and Immigration Services or CIS) or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; 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).

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 applicant 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 May 16, 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in the Bronx, New York from January 1981 until June 1988 and then [REDACTED] in the Bronx, where he lived from June 1988 until December 1993. At part #31 where the applicant was asked to list all churches and organizations he was of which he was a member, he indicated he was not affiliated with any churches or organizations. At part #32 where the applicant was asked to list all of his absences from the United States since he entered, he indicated that he was only absent once, when he went to the Gambia to attend his grandmother's funeral in December 2002 and returned in March 2003. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be: working for Leather Cave performing security work from February 1981 until December of 1983. It is noted that in February of 1981 the applicant would have been sixteen (16) years old. The applicant then showed that he was a self-employed street vendor in New York from December 1983 until December 1990.

Also in the record is a Form I-589, Application for Asylum and Withholding of Deportation, signed by the applicant on June 5, 1995. On this form, the applicant indicated that he last entered the United States on September 9, 1992. It is noted that this conflicts with the information provided by the applicant on his Form I-687, where he indicated he was not absent from the United States at any point in time from 1981 until December of 2002.

The record contains an I-94 Departure Record bearing number [REDACTED] which indicates that the applicant entered the United States as a B2 visitor on September 9, 1992.

The record also contains photocopies of pages of the applicant's passport bearing the number 128514. This passport shows that the applicant was issued a B1/B2 visa by the United States consulate in Banjul, the Gambia on July 30, 1992 and that he entered the United States using this visa on September 9, 1992.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant did not provide any evidence with his Form I-687.

In her Notice of Intent to Deny (NOID), the director noted that the applicant had failed to submit evidence in support of his claim of having resided continuously in the United States during the requisite period. The director also noted that the record showed that the applicant had entered the United States on September 9, 1992, which conflicted with information he provided on his Form I-687 regarding his absences. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

On the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since 1981. He did not submit any evidence that he had resided or worked in the United States during the requisite period other than his own testimony. As was previously noted, the regulation at 8 C.F.R. § 245a.2(d)(6) specifies that applicants must submit evidence other than their own testimony to meet their burden of proof.

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)).

In her Notice of Decision, the director noted that the NOID was returned to the Service as undeliverable but stated that Service records did not show that the applicant had submitted an address change request to the Service. It is noted here that the regulation at 8 C.F.R. § 265.1 requires all applicants for benefits to report a change of address within ten (10) days on a Form AR-11. Here, the record does not contain a Form AR-11. The record shows that the director sent the NOID to the applicant's address of record. As the applicant did not submit additional evidence in support of his application in response to the director's NOID, he failed to overcome her reasons for denial contained in that NOID. Therefore, the director denied the application.

On appeal, the applicant submits an affidavit in support of his application. Details of that affidavit are as follows:

- A photocopy of an affidavit from [REDACTED] dated July 6, 2006. In this affidavit, [REDACTED] states that he personally knows that the applicant lived at [REDACTED] in the Bronx from 1981 to 1993. It is noted that though the applicant did indicate that he lived at [REDACTED] in the Bronx, he indicated that he did so from January of 1981 until June of 1988, when he moved to a residence on [REDACTED]. Mr. [REDACTED] goes on to say that he met

the applicant in 1981 when he came to the mosque to attend religious services. As was previously noted, part #31 of the applicant's Form I-687 indicates that the applicant was not affiliated with any religious institutions during the requisite period. Because testimony in this affidavit is not consistent with what the applicant showed as his Form I-687 regarding both his address of residence and his attendance of a mosque, doubt is cast on this affidavit. Therefore, it carries little weight in establishing that the applicant resided in the United States during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that on August 17, 2007 the Service received a letter from the Masjid Malcolm Shabazz mosque in New York in which the Executive Director of that mosque stated that the affiant from whom the applicant submitted an affidavit, [REDACTED], submitted documents on behalf of a number of individuals that were not supportable by that mosque. With that letter was a Release and Acknowledgement of Sole Responsibility Statement from [REDACTED] dated August 16, 2007.

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. at 79-80. 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 any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only one person concerning that period. The affidavit contains testimony that is not consistent with what the applicant showed on his Form I-687. Further, the Service has received adverse information about statements made by that affiant.

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 contradictory statements within the record and the applicant's reliance upon one document that is not consistent with other evidence in the record, 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.