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20 Mass. Ave., N.W., Rm. 3000
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FILE: [REDACTED]
MSC-06-026-12664

Office: NEW YORK Date: JUN 25 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. In her Notice of Intent to Deny (NOID), the director stated that her office found the affidavits and other documents submitted by the applicant as proof of his residence during the requisite period were not credible or amenable to verification. The director stated that this caused the applicant to fail to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. The director granted the applicant 30 days within which to submit additional documents in support of his application. Though the director noted that she received additional evidence from the applicant in response to her NOID, she found that this additional evidence was not sufficient to overcome her reasons for denial. In saying this, the director cited the regulation at 8 C.F.R. § 245a.2(d)(5) which states in pertinent part that applicants bear the burden of proving that they resided in the United States for the requisite period and are admissible to the United States. Here, the director found the applicant did not meet this burden.

On appeal, the applicant asserts that he believes the director did not accord sufficient weight to the evidence he submitted in support of his application. He submits a brief.

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) 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. 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).

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 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 applicant 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.

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 October 26, 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 address in the United States during the requisite period to be [REDACTED] in Brooklyn, New York from November 1981 until June 1988. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period when he went to Pakistan for a family emergency from May to June of 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that during the requisite period he was employed as: a stock person for Empire Furniture from December 1981

to February 1984; as a salesperson at Raphael Jewelry from March 1984 until April 1986; and as a salesperson at Jewelrama, Inc. from March 1986 until May 1988.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

The applicant submitted the following documents that are relevant to the requisite period with his application:

Employment verification letters:

It is noted that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

1. A letter from the India America Travel Agency that is dated December 16, 1981 and is signed by [REDACTED] who indicates that he or she is a sales manager. This letter states that the applicant was employed by this company on a part-time basis from November until December 1981. It is noted that the applicant did not show that he was employed by this company on his Form I-687. It is also noted that the record indicates the director's office was unable to verify this letter after attempting to do so. Additionally, it does not meet the criteria as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Therefore, minimal weight can be accorded to this document as proof of the applicant's residency in the United States during the requisite period.

2. A letter from Raphael Jewelry that is dated April 20, 1986 and is signed by [REDACTED], who indicates that he or she is the Vice President of Raphael Jewelry. This letter verifies the applicant's employment from March 1984 until April 1986. This letter does not state how Mr. or Ms. [REDACTED] was able to verify the exact dates of the applicant's employment with the company. Further, this employment verification letter does not meet the criteria as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Therefore, minimal weight can be accorded to this document as proof of the applicant's residency in the United States during the requisite period.
3. A letter from Jewelrama, Inc. that is dated May 2, 1988 and is signed by [REDACTED], who indicates he is the stock and sales manager. In this letter, Mr. [REDACTED] verifies the applicant's employment from March 1986 until May 1988. It is noted that the applicant indicated he was working for both Raphael Jewelry and for Jewelrama, Inc. in March and April of 1986. This letter does not state how [REDACTED] was able to verify the exact dates of the applicant's employment with the company. The record indicates that the director was unable to verify the contents of the letter when she attempted to contact the company at the telephone number listed on the letter. Further, this employment verification letter does not meet the criteria as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Therefore, minimal weight can be accorded to this document as proof of the applicant's residency in the United States during the requisite period.
4. A letter from Empire Furniture that is dated February 26, 1984 and is signed by [REDACTED]. This letter states that the applicant worked for this company from December 1981 until February 1984. This letter does not state how [REDACTED] was able to verify the exact dates of the applicant's employment with the company. The record indicates that the director was unable to verify the letter after attempting to do so by using the telephone number listed on this letter. Further, this employment verification letter does not meet the criteria as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Therefore, minimal weight can be accorded to this document as proof of the applicant's residency in the United States during the requisite period.
5. A letter from the Islamic Center of New Jersey signed by [REDACTED] who indicates she is a board member of the Mosque Committee. This letter is dated November 26, 1984. Ms. [REDACTED] states that the applicant joined the mosque in December 1981 and continued to be a member through the date [REDACTED] signed the letter. She states the applicant attends Friday prayers but she fails to indicate the frequency with which he did so during the requisite period or whether there were periods of time during the requisite period when he did not attend prayers. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, unions or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization

impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to indicate how [REDACTED] can verify the applicant's exact start date as a member. It does not state the address where the applicant resided during his membership period. Because this letter is lacking with regards to these criteria, it can be accorded minimal weight as evidence that the applicant resided in the United States for the requisite period.

6. A letter from the New York Telephone Company that is dated March 10, 1982 and is signed by [REDACTED], who indicates that he or she is the manager of customer services. This letter is addressed to the applicant and states that the company has received his request for a telephone connection and requires further documents from him.
7. A letter from Pan Am Airlines signed by [REDACTED] and dated August 7, 1987. This letter states that the applicant purchased a one way ticket for a flight from New York to Karachi, Pakistan that left on May 6, 1987.
8. A letter from [REDACTED], a urologist, stating that the applicant became his patient on March 5, 1986 until the letter was signed on April 28, 1987. It is noted here that this doctor had his license to practice medicine revoked on January 3, 1996 after pleading guilty to and then being convicted of *Falsifying Business Records in the First Degree*, which is a violation of New York Penal Law § 175.10, a Class E Felony in the State of New York.
9. A lease for an apartment located at [REDACTED]. This lease was signed by the superintendent of the apartment, [REDACTED] and the applicant. This is a two year lease which began November 15, 1981 and ended November 14, 1983. It is noted that Mr. [REDACTED] spelled his name, [REDACTED] when he signed this lease. That the superintendent misspelled his name casts doubt on the veracity of this document.
10. A lease for the property of [REDACTED] located at [REDACTED]. This lease was from November 30, 1984 until November 29, 1986. The lease was signed by both Nathan Smultson, who indicated that he was the executor of the estate of [REDACTED], and the applicant. It is noted that the lease indicates that the owner of the property, [REDACTED] was deceased at the time the lease was signed.

The director issued a Notice of Intent to Deny (NOID) to the applicant on April 17, 2006. In her NOID, the director stated that the employment letters submitted by the applicant were not amenable to verification. The director noted that the lease agreement between the applicant and [REDACTED] appeared to have been altered. It is noted here that [REDACTED] misspelled his first name when he signed this lease. She further noted that the lease agreement between the applicant and the estate of [REDACTED] was between the applicant and an individual who was deceased. It is noted here that this lease agreement clearly indicates that it was signed by an individual who was managing the estate of the decedent. The director went on to say that the documents submitted by

the applicant were not found credible because they were not submitted with documents identifying affiants, proof that affiants were in the United States during the statutory period, proof that there was a relationship between the applicant and the affiant and a current phone number at which the affiants may be contacted for verification. She stated that none of the documents submitted by this applicant met these criteria. Therefore, the director found the applicant failed to meet his burden of proof. She granted him 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following:

1. A response to the director's NOID that is dated May 11, 2006 and was received by CIS on May 15, 2006. In this response, the applicant asserts that though he submitted employment letters and other evidence of his residence during the requisite period, because of the passage of time, the companies that the applicant worked for have gone out of business. Therefore, he cannot produce a means of verifying the employment letters he submitted. He goes on to say that the lease agreement between the applicant and the estate of [REDACTED] was signed by [REDACTED] who, as previously noted, the record shows was the executor of the estate of [REDACTED]. He asserts that neither lease agreement has been altered.

The director denied the application for temporary residence on September 26, 2006. In denying the application, the director found that the applicant's rebuttal to her NOID did not allow him to overcome her reasons for denial as stated in her NOID.

On appeal, the applicant emphasizes that at the time of his interview with a CIS officer pursuant to his Form I-687 application on March 30, 2006, the interviewing officer did not find any inconsistencies between the applicant's testimony and the record. The applicant explains that he did not submit additional evidence in response to the director's NOID because he felt that the record already contained sufficient evidence to meet his burden of proof. He states that it is unreasonable for the director to request that he submit updated telephone numbers and contact information for companies that the applicant worked for from 1981 to 1988 that are currently out of business due to the passage of time. He also emphasizes that the lease between the applicant and the estate of [REDACTED] was signed by the executor of [REDACTED]'s estate rather than by the decedent.

The AAO finds that though the applicant was requested by the director to submit documents that were amenable to verification, he failed to do so. The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that all documentation submitted by an applicant will be subject to Service verification. Applications submitted with unverifiable documentation may be denied.

In this case, the absence of credible and probative documentation that is amenable to verification and that corroborates the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 credible supporting documentation that is amenable to verification, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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