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U.S. Citizenship
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FILE:

MSC 05 151 10271

Office: DETROIT

Date:

MAY 27 2008

IN RE:

Applicant:

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, Detroit, and is now before the Administrative Appeals Office 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. Specifically, the director found that the applicant failed to submit additional evidence in response to the notice of intent to deny. However, a review of the record suggests that the director's comments were inapplicable to the matter at hand, as there is no evidence that a notice of intent to deny had been issued. As such, the director's erroneous comment is hereby withdrawn. Notwithstanding this error, the director properly denied the application on the basis that the applicant had failed to submit sufficient documentation to support his claim 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 disputes the director's findings and provides additional evidence in support of his claim.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden. The record shows that the following documentation has been submitted in support of the applicant's claim regarding his continuous residence in the United States during the relevant time period:

1. A photocopied letter dated December 21, 1995 and signed by [REDACTED] who identified himself as public information for Masjid Malcolm Shabazz. Mr. [REDACTED] stated that the applicant has been in the United States since 1981 and is "a member of the Muslim [c]ommunity." Although [REDACTED] stated that the applicant attends Friday prayer services at Masjid Malcolm Shabazz, he provided no basis for his purported knowledge that the applicant has been in the United States since 1981, as there is no indication that the applicant was a member of Masjid Malcolm Shabazz when he first entered the United States. Furthermore, the letter appears to have been altered and the name of the applicant appears to have been filled in by hand. Lastly, the applicant did not include Masjid Malcolm Shabazz in No. 31 of the Form I-687, which instructs the applicant to list his affiliations or associations with any clubs, organizations, or churches. Thus, based on these numerous deficiencies, the letter from Masjid Malcolm Shabazz will be afforded minimal weight as evidence in support of the applicant's claim.
2. An affidavit dated February 15, 2005 from [REDACTED] who claimed that he had personal knowledge of the applicant's residence in the United States since 1981. He claimed that he first met the applicant on the street. However, he provided no information

as to the circumstances of his first encounter with the applicant, nor did he provide any details about the applicant's purported residence in the United States during the requisite time period in order to lend credibility to an alleged 24-year relationship with the applicant. As such, this affiant's statement will be afforded minimal weight as evidence of the applicant's residence during the relevant statutory time period.

3. A letter from [REDACTED] the applicant's father, who claimed that he entered the United States in 1981 with his son, the applicant in the present matter. Although the foreign language letter is accompanied by an English language translation containing the name of the applicant, there is no certification from the translator stating that he/she is competent to translate from the foreign language into English as required by 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not analyze the contents of this letter, which thereby lacks probative value and will not be accorded any weight in this proceeding.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted questionable non-contemporaneous evidence severely lacking in probative value. The absence of sufficiently detailed 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 applicant's 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 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-*, 20 I&N Dec. 77. 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.