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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Cincinnati Date: JUL 11 2007

MSC 05 182 10352

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.

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

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant claims that the CIS officer who conducted his interview threatened him with imprisonment and made him afraid. The applicant contends that the interviewing officer did not ask him to for proof in support of his claim of residence in the United States for the requisite period. The applicant submits documents in support of his appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien applying 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 and 8 C.F.R. § 245a.2(b)(1).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying 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, its credibility and amenability to verification. *See* 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 March 31, 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 listed '[redacted]' in Philadelphia,

Pennsylvania from May 1986 through at least the date of the termination of the original legalization application period on May 4, 1988. In addition, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed "None."

The fact that the applicant failed to list any residence in this country prior to May 1986 at part #30 of the Form I-687 application seriously diminished his claim of continuous residence in the United States since prior to January 1, 1982. Further, the applicant failed to include any documentation in support of his claim of continuous residence in this country for the period in question.

The record shows that the applicant subsequently appeared for an interview relating to his Form I-687 application at the Citizenship and Immigration Services office in Cincinnati, Ohio on November 28, 2005. The notes of the interviewing officer reflect that the applicant testified under oath that he entered the United States for the first time in 1986 and that he had never been in this country before 1986. The record reflects that the applicant acknowledged his testimony by signing the notes of the interviewing officer. The applicant's testimony that he first entered the United States in 1986 and that he had never been in this country prior to such date directly contradicted his claim to have continuously resided in the United States since prior to January 1, 1982.

On December 16, 2005, the district director issued a notice of decision to the applicant informing him that his application was denied because of his sworn testimony at his interview on November 28, 2005 that he first entered this country in 1986.

On appeal, the applicant claims that the CIS officer who conducted his interview threatened him with imprisonment and made him afraid. However, the applicant failed to list any residence in this country prior to May of 1986 at part #30 of the Form I-687 application that was submitted on March 31, 2005. The record shows that the applicant subsequently corroborated his listing of the date he began residing in this country by testifying under oath that he first entered the United States in 1986 and that he had never been in this country prior to such date at his interview on November 28, 2005. The fact that the applicant acknowledged this testimony by signing the notes of the interviewing officer negates his claim that the interviewing officer made him afraid by threatening him with imprisonment.

The applicant submits an affidavit that is signed by [redacted] and dated January 3, 2006. [redacted] recounted how he and the applicant traveled together by car from Canada, crossed the border into the United States, and traveled through New York State before arriving in New York City in 1981. However, [redacted] testimony that he and the applicant entered the United States in 1981 conflicts with the applicant's own testimony that that he first entered this country in 1986 and that he had never been in this country prior to this date. In addition, [redacted] failed to provide any testimony that the applicant resided in this country from prior to January 1, 1982 to May 4, 1988.

The applicant provides a letter containing the letterhead of Pan African Islamic Society with offices in the Gambia and New York, New York that is dated January 7, 2006. The letter is signed by [redacted] who listed his position as Imam. [redacted] stated that the applicant was a congregant of this organization's mosque in New York, New York who regularly attended Friday services from 1983 to 1986. However, [redacted] failed to include the applicant's address of residence during that period that he was a congregant of this mosque as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the applicant fails to provide any explanation as to why he did not list his affiliation with this organization at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant includes a letter containing the letterhead of the Queens Hospital Center in Jamaica, New York that is dated January 4, 2006. The letter is signed by [redacted] who declares that he first met the applicant at the hospital when the applicant sought medical treatment on two separate occasions in 1983. [redacted] states that he and the applicant have subsequently kept in touch whenever he feels sick. Although [redacted] attests to the applicant's residence in the United States from 1983 onwards, he fails to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 through 1983. In addition, [redacted]s testimony fails to include any pertinent and verifiable information, such as the applicant's address(es) of residence, to confirm the applicant's claim of residence in this country from 1983 to May 4, 1988.

The applicant submits two photocopied envelopes that are both addressed to the applicant at [redacted] in Brooklyn, New York, contain postage stamps from the [redacted] and are postmarked June 12, 1982 and May 21, 1985, respectively. However, the applicant fails to provide any explanation as to how he was receiving mail at address in Brooklyn, New York that he did not list as an address of residence at part #30 of the Form I-687 application and prior to the date, 1986, that he previously testified that he first entered the United States.

The applicant contends that the interviewing officer did not ask him to for proof in support of his claim of residence in the United States for the requisite period. However, the affidavit and two letters the applicant submits on appeal are all dated after the date of his interview on November 28, 2005. While the photocopied envelopes are postmarked June 12, 1982 and May 21, 1985, respectively, the applicant fails to provide any explanation as to why such documentation was not included with the filing of his Form I-687 application on March 31, 2005 if he had been in possession of such postmarked envelopes for over twenty years. Moreover, the record shows that the applicant failed to submit any evidence of residence in this country during the requisite period prior to the filing of his appeal.

The applicant's contradictory testimony regarding the date he first entered the United States and the lack of sufficient credible evidence that provides relevant and material testimony to corroborate his claim of continuous residence for the 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. The applicant has failed to any documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. at 77.

Given the applicant's contradictory testimony and failure to provide any sufficient credible evidence to corroborate his claim of residence, 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 as required under section 245A(a)(2) of the Act. 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.