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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-088-10369

Office: Newark

Date: JUN 04 2007

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:

[REDACTED]

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. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 of May 5, 1987 to May 4, 1988. Therefore, the director determined 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, counsel for the applicant states that the applicant entered the United States with his mother when he was ten years old in 1981. Counsel asserts that the director failed to consider the applicant's age when evaluating the sufficiency of his documentation. Counsel maintains that the applicant has sufficiently established his eligibility.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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 (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.

The record shows that the applicant filed an I-687 application and an I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on December 27, 2004. The applicant's record indicates that he had previously filed an I-687 application in 1991. The applicant's current I-687 application, filed under the CSS/Newman Settlement Agreement, is materially inconsistent with his previous application. Part 30 of the I-687 application requests the applicant to provide all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED] from July 1981 until September 1988. This information is inconsistent with the applicant's previously filed I-687 application, which states that he resided at the [REDACTED] Hotel in New York, NY from August 1981 until June 1986. The applicant submitted a letter with his previous application from the [REDACTED] Hotel, located at [REDACTED] to corroborate his residence at the hotel. This inconsistency was noted in the director's notice of intent to deny, dated March 29, 2006. The applicant responded to the notice of intent to deny with a rebuttal, which states that another person completed his I-687 application and he signed it without reviewing it for inaccuracies. The

applicant maintains in his rebuttal that his actual residence was at the Aberdeen Hotel. The applicant's explanation is not reasonable since his I-687 application indicates that he completed it without the assistance of a preparer. Additionally, Part 33 of the I-687 application requests the applicant to provide his employment in the United States since his entry. The applicant failed to report any employment information from prior to 1990 in his application. This information is inconsistent with the applicant's previous I-687 application, which states that the applicant was a "stock boy" with Wings from June 1987 until December 1988 and a "stock boy" with Francis Changes Quickly from December 1988 until January 1990. The applicant provided with his previous I-687 application letters from these two employers as corroborating evidence. Lastly, the applicant reported on Part 31 of his I-687 application, under the category Affiliations or Associations, that he attended the [REDACTED] in the Bronx, NY. The applicant has failed to provide any supporting documentation of his attendance at this school. The applicant's purported attendance at the [REDACTED] School is inconsistent with the statement he submitted on appeal. The applicant's statement provides that, "I never been registered in any school due to the fact that my mom and I live in fear, in a shadow without knowing that it was possible at that time to register me in any school." The noted inconsistencies in the applicant's I-687 application seriously detract from the credibility of his claimed period of continuous residence in the United States.

The applicant has provided additional documentation to corroborate his period of continuous residence in the United States. The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, "[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted with his previous I-687 application, an "Affidavit of Witness" from [REDACTED] dated August 15, 1991. This "fill in the blank" affidavit provides that Mr. [REDACTED] has personally known the applicant and has knowledge of the applicant's residence in the United States from August 1981. The weight to be given to affidavits depends on the totality of the circumstances. Affidavits are evaluated based on the affiant's specific, personal knowledge of the applicant's whereabouts during the time period in question. This affidavit fails to provide specific information on Mr. [REDACTED] personal knowledge of the applicant's continuous residence during the requisite period. The affidavit also fails to contain any documentation to confirm Mr. [REDACTED] identity. Therefore, this affidavit is given minimal weight due to its lack of detail.

The applicant submitted a letter from [REDACTED] located at [REDACTED]. This letter, dated June 21, 1991, provides, "[t]his is to state that Mr. [REDACTED] fall [sic] is a member of the Muslim community since September 1982. He attends all Friday [sic] Prayers held here in the Masjid." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of an attestation by a church or other organization, which identifies the applicant by name, is signed by an official, shows inclusive dates of membership, states the address where applicant resided during the membership period, includes the seal or letterhead of the organization, establishes how the author knows the applicant, and establishes the origin of the

information being attested to. The letter from Masjid fails to satisfy the delineated criteria in several respects. The letter fails to explain where the applicant resided during the membership period and it fails to establish the origin of the information being attested to. Therefore, this letter is also given minimal weight due to its lack of detail.

The applicant submitted a letter from [REDACTED] N.D., Dermatology and Dermatologic Surgery, dated October 27, 1990. This letter provides, "I want my statement to prove that Mr. [REDACTED] Fall has been a Client of mine since July of 1983. He and his mother come [sic] to see me in [sic] a bi-monthly basis. They brought me a lot of client [sic] over the years. They are good persons to whom one can relya [sic] on." Although this letter provides information on the applicant's medical treatment with [REDACTED] N.D. since July 1983, it does not establish by a preponderance of the evidence the applicant's residence in the United States during the requisite period. This letter fails to establish the applicant's continuous unlawful residence in the United States from *prior* to January 1, 1982. Moreover, this letter alone does not overcome the significant negative credibility factors found in the applicant's record.

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 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 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, 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.