



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-270-10590

Office: NEW YORK

Date: **SEP 28 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.

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

The director determined the applicant failed to submit documents constituting a preponderance of the evidence as to his residence in the United States. As a result, the director denied the application.

On appeal, the applicant stated that the director failed to give due weight to the applicant's clarification of the issues raised in the Notice of Intent to Deny (NOID). The applicant also provided additional documents 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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 applicant 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 applicant 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 and 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 (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 Citizenship and Immigration Services (CIS) on June 27, 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 the following addresses in New York, New York during the requisite period: [REDACTED] from May 1981 to January 1987; and [REDACTED] from January 1987 to June 1996. At part 31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "N/A." At part 33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Kitchen helper with Nupur Indian Restaurant in New York, New York, from 1981 to 1984; kitchen helper with Shah Bagh Restaurant in New York, New York, from January 1985 to June 1986; and helper with Style Painting & Home Improvement, Inc. in Brooklyn, New York, from July 1986 to 1991.

In support of his Form I-687 application, the applicant submitted a copy of his initial Form I-687 application dated December 12, 1990. On the original application, at part 33 where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following address: [REDACTED] from 1981 to present. This information is inconsistent with the information the applicant provided on the current Form I-687. Specifically, on the current Form I-687 the applicant indicated he lived in apartment #1A only starting in January 1987, while he lived in #1C from May 1981 to January 1987. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period. At part 34 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant did not provide any information.

The applicant included a copy of an airplane ticket for travel on August 10, 1987 from New York to Dhaka, via London. The ticket listed the name of the passenger as, [REDACTED]. This ticket tends to show the applicant was in the United States on August 10, 1987. However, the ticket does not list the applicant's address, and it does not indicate the applicant actually resided in the United States during the requisite period.

The applicant also provided a letter with a notarized signature from the manager of Nupur Indian Restaurant. This letter, dated May 5, 1991, confirms the applicant's employment from 1981 to 1984 as a kitchen helper, and lists the applicant's salary. The name of the individual who signed this letter appears to be [REDACTED]. The letter lists the applicant's first name as [REDACTED] instead of [REDACTED]. This inconsistency calls into question whether [REDACTED] can actually confirm the applicant's residence during the requisite period. The record indicates an attempt was made to contact the phone number listed on this letter on January 19, 2006 and the number was found to be a fax number. Lastly, this letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not include the applicant's address at the time of employment, whether the information was taken from official company records, where records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided a letter from [REDACTED] manager of [REDACTED] confirming his employment as a kitchen helper from January 1985 to June 1986. This letter also lists the applicant's salary. The letter is not dated. The absence of a date on the letter calls its authenticity into question. This letter also lists the applicant's first name as "[REDACTED] instead of [REDACTED]" This inconsistency calls into question whether [REDACTED] can actually confirm the applicant's residence during the requisite period. In addition, the record indicates an attempt was made to call the number listed on the letter on January 19, 2006, and the number was not in service at that time. Lastly, the letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not include the applicant's address at the time of employment, whether the information was taken from official company records, where records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also provided a letter dated May 22, 1991 from Style Painting & Home Improvement, Inc. that confirms the applicant's employment as a helper since July 1, 1986. The letter includes a notarized signature from [REDACTED]. The letter also lists the applicant's salary. The record indicates an attempt was made to contact the phone number listed on this letter on January 19, 2006 and the number was found to be a fax number. In addition, this letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not include the applicant's address at the time of employment, whether the information was taken from official company records, where records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided a form affidavit from an individual whose name is not clearly legible but appears to be, [REDACTED]. In this affidavit dated July 18, 1991, the affiant confirmed the applicant's residence in the United States from May 1981 to "still." The information provided in this affidavit was consistent with the information provided on Form I-687, except that the affiant

indicated the applicant lived in #1C only until December 1986, as opposed to January 1987. The only additional legible information provided in this affidavit is, "Sometimes he visit[s] my apartment. He is my best friend." The affidavit does not provide any information regarding the manner in which the applicant and the affiant became acquainted. Since the affiant claimed to be the applicant's best friend, it is reasonable to expect that he should provide a high level of detail regarding the applicant. As a result, this affidavit is found to be lacking in detail. Although not required, the applicant also failed to submit any documentation of the affiant's identity or presence in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] who provided address information for the applicant that was identical to the information provided in [REDACTED] affidavit. [REDACTED] listed his own current address as [REDACTED] and indicated he knew the applicant as his roommate from May 1981 to December 1986. The affiant indicated he had known the applicant in Bangladesh and had taken care of the applicant in the United States. Although not required, the applicant failed to submit any documentation of the affiant's identity or presence in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] who provided address information for the applicant that was identical to the information provided in [REDACTED] affidavit. [REDACTED] listed his current address as [REDACTED] [REDACTED] indicated he had known the applicant since childhood and that the applicant lived with him as a roommate in his apartment from January 1987 to "still now." Although not required, the applicant failed to submit any documentation of the affiant's identity or presence in the United States during the requisite period.

The applicant provided a letter from the Islamic Council of America Inc. (ICAI) dated July 15, 1991. The letter contains the notarized signature of an individual whose name is illegible and who is identified as Secretary, [REDACTED]. In this letter, the declarant stated that the applicant came to "our [REDACTED] from 1981 until the time the letter was written every Friday for prayer. This letter appears to be inconsistent with both Forms I-687 submitted by the applicant. Specifically, where the applicant was asked to list affiliations with organizations such as churches, the applicant failed to list his association with the ICAI or with [REDACTED]. In addition, this letter does not conform to regulatory requirements for attestations by churches, unions, or other organizations. Specifically, this letter does not state all the addresses where the applicant resided during his membership, establish how the author of the letter knows the applicant, or establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

Lastly, the applicant submitted an additional letter from the ICAI, dated November 18, 2001. This letter was signed by [REDACTED] but was not notarized. This letter does not confirm the applicant's residence in the United States during any portion of the requisite period. In addition, this letter does not conform to regulatory requirements for attestations by churches, unions, or other organizations. Specifically, this letter does not show the title of the official who signed it, state the addresses where the applicant resided during his membership, establish how the author of the letter

knows the applicant, or establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

In response to the NOID, the applicant provided identity documentation for [REDACTED] and [REDACTED]. No statement of [REDACTED] was found in the record, so the purpose of including his identification is unclear. The applicant also included an affidavit he signed that attempted to explain the difficulty in contacting the applicant's former employers. Specifically, the applicant explained that the two restaurants that had employed the applicant have been replaced by other businesses, and Style Painting & Home Improvement Inc. has gone out of business. This explanation is found to be reasonable considering that more than 15 years have passed since the applicant's employment letters were prepared. The applicant included documentation confirming that different restaurants now exist in the locations listed in his employment confirmation letters. This evidence is given no weight in determining whether the former places of employment actually existed and employed the applicant during the requisite period. The applicant also questioned the director's reference to an affidavit from [REDACTED] Hama." It appears that the director may have misread the signature of another individual as [REDACTED] because the signature is not clearly legible. The applicant explained that [REDACTED] is deceased and his wife was currently in Bangladesh so the applicant could not obtain evidence of his death. Lastly, the applicant provided a contact telephone number for [REDACTED]

In denying the application, the director mentioned that the applicant had claimed to enter the United States by ship in 1981 but provided no evidence of this entry. The director reiterated the unsuccessful attempts that were made to contact the applicant's former employers. She also noted that the affidavits the applicant submitted were not accompanied by evidence that the affiants were in the United States during the requisite period. The director determined the applicant failed to submit documents constituting a preponderance of the evidence as to his residence in the United States.

On appeal, the applicant stated that the director failed to give due weight to the applicant's clarification of the issues raised in the NOID. The applicant also provided additional documents in support of his application. The applicant provided a copy of the death certificate for an individual named [REDACTED] who the applicant identified as his affiant, [REDACTED]. The applicant failed to explain the difference between the name listed on the death certificate and the name on the affidavit. This unexplained discrepancy casts some doubt on the affidavit attributed to [REDACTED]. The applicant also included a third letter from the ICAI. This letter fails to specifically confirm the applicant's residence in the United States during the requisite period.

It is noted that the record contains a Form I-485 application for permanent residence submitted by the applicant and dated November 1, 2001. At part 3C where applicants were asked to list membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group, the applicant stated, "none." This is found to be inconsistent with the first letter from ICAI that confirms the applicant's involvement between 1981 and 1991. This

inconsistency calls into question whether the representatives of ICAI can actually confirm the applicant's residence in the United States during the requisite period.

A Form G-325A Biographic Information, dated November 1, 2001, was submitted with the Form I-485 application. On the Form G-325A where applicants were asked to list their residences for the past five years, the applicant listed the following New York, New York addresses: [REDACTED] Street from December 1981 to December 1981; [REDACTED] from January 1982 to January 1982; and [REDACTED] from February 1982 to the present time. This information is inconsistent with the information provided on the Form I-687 application. The Form I-687 lists only the Stanton Street address during the requisite period, and indicates the applicant resided at this address from May 1981 to June 1996. However, the applicant also indicated on this form that he lived in apartment #1C from May 1981 to January 1987 and then in apartment #1A from January 1987 to June 1996. Specifically, on Form I-687 the applicant listed only the two different apartments at the [REDACTED] address during the requisite period, and on Form G-325A the applicant listed three addresses during the requisite period but only one apartment at the Stanton Street address. In addition, the Form I-687 indicates the applicant's first address in the United States began in May 1981, while the Form G-325A indicates the applicant's first address in the United States began in December 1981. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period. In addition, Form G-325A is inconsistent with the affidavits from [REDACTED] because [REDACTED] stated he lived with the applicant in apartment #1C from May 1981 to December 1986 and [REDACTED] stated he lived with the applicant in apartment #1A from January 1987 to the present time, while Form G-325A indicates the applicant lived in apartment 1A from February 1982 to the present time. These inconsistencies call into question whether [REDACTED] can actually confirm the applicant's residence in the United States during the requisite period.

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 affidavits and letters that list the applicant's name with an incorrect spelling, do not conform to regulatory standards, lack sufficient detail, conflict with the applicant's statements, or do not confirm his residence during the requisite period. Specifically, the letters from [REDACTED] list the applicant's name with an incorrect spelling and do not conform to regulatory standards. The letter from [REDACTED] does not conform to regulatory standards. The affidavit from [REDACTED] lacks sufficient detail. Doubt is cast on the credibility of the form affidavit from [REDACTED] since the applicant failed to explain why the name listed on the death certificate does not match the name listed on the affidavit. In addition, the affidavits from [REDACTED] conflict with the information provided by the applicant on Form G-325A. The letters from ICAI are inconsistent with the statements on both Forms I-687 and the Form I-485 application, since the applicant failed to list his involvement in this organization when this information was requested. In addition, the first letter from ICAI does not conform to regulatory requirements and the second and third letters fail to confirm the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's Form I-687 application, Form I-485 application, and supporting affidavits, and 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--*, *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.