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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 29 2008

MSC 06 077 10716

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. 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, New York, 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, the applicant asserts that the director erred in denying his application and did not take into consideration the credible evidence submitted 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 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 "[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 to CIS on December 16, 2005. His Form I-687 Supplement, CSS/Newman Class Membership Worksheet, is dated November 11, 2005. At block 30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant stated that he lived at [redacted], in Elmhurst, New York from November 1981 to September 1986, and at [redacted] in Astoria, New York from October 1986 to December 1996. The applicant entered "N/A" in block 31, where applicants are requested to identify any affiliation or associations, clubs, churches, or other organizations, to which he or she belonged. At block 32, where applicants are asked to list all absences from the United States since entry, the applicant stated that his only absence during the requisite period was from June 10 to 18, 1987, when he went to Canada to visit a friend and family. In block 33, where applicants are asked to list all employment in the United States since entry, the applicant stated that he was self employed from May 1984 to June 1986, and worked for Cafe 50 in Manhattan, New York from July 1986 to October 1989. The applicant did not identify any employment prior to May 1984.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

1. An undated letter from [redacted] in which he stated that he had known the applicant since December 1981, and that he was present when the applicant attempted to submit his immigration application "some times in 10/1987 as a qualified member of CSS." Mr. [redacted] did not identify his relationship with the applicant or whether their initial acquaintance occurred in the United States.

2. An undated letter from [redacted], in which he stated that he had known the applicant since June 1983, and that he was present when the applicant attempted to submit his immigration application "some times in 10/1987 as a qualified member of CSS." Mr. [redacted] did not identify his relationship with the applicant or whether their initial acquaintance occurred in the United States.

In response to the director's Notice of Intent to Deny (NOID) dated July 14, 2006, the applicant submitted the following documentation:

3. An August 4, 2006, affidavit from [redacted], in which he stated that he met the applicant in December 1981, at a community gathering in Queens, New York, and visited him at his home in Elmhurst and Astoria.

4. An August 4, 2006, affidavit from in which he stated that he met the applicant at a June 1983 community gathering in Queens, and visited him in his home in Elmhurst and Astoria.

The director determined that the applicant had failed to establish by a preponderance of the evidence that he resided continuously in the United States in an unlawful status for the requisite period and denied the application on August 16, 2006.

On appeal, the applicant submits a photograph, which he asserts is evidence of his presence and residence in the United States. However, the photograph is not dated and contains no other indication that it was taken in the United States during the requisite period.

The record reflects that the applicant filed an application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act under CIS receipt number MSC 03 154 62752, which was denied by the Director, National Benefits Center, on August 23, 2003. While the applicant's appeal of that decision is not at issue in this decision, the record reflects that on a form to determine class membership, which he signed under penalty of perjury on November 2, 1992, the applicant stated that he first arrived in the United States in November 1981, when he crossed the border without inspection. The record reflects that the applicant was born on March 25, 1968, making him 13 years old at the time he stated he first entered the United States. He also stated that he visited Canada from June 10 to June 18, 1986. According to a Form I-687 application that he signed under penalty of perjury on February 13, 1991, the applicant stated that he did not work from November 1981 to October 1982. However, he stated that from November 1982 to May 1986, he was self-employed doing odd jobs before he began working for Cafe 50 in July 1986. The applicant also indicated that he had been affiliated with the Islamic Council of America, Inc., since November 1985. On a Form I-687 application dated September 8, 1987, the applicant stated that he had also been affiliated with the Bangladesh Society in Elmhurst, New York from December 1981. The applicant also stated on this 1987 Form I-687 application that he had been self-employed in food service from November 1982 to June 1986. The applicant submitted the following documentation in support of his Form I-485 application:

5. A copy of a December 10, 1990, affidavit from [redacted], in which he stated that he had known the applicant since 1981, and that the applicant visited Canada from June 10 to June 18, 1986. The affiant did not state the circumstances surrounding his initial acquaintance with the applicant, that the applicant lived in the United States throughout the requisite period, or indicate the basis of his knowledge regarding the applicant's visit to Canada.

6. A copy of a May 20, 1990, notarized statement from who identified himself as the assistant secretary of the Islamic Council of America, Inc., in New York. [redacted] certified that he had known the applicant since January 1982, and that the applicant made a short visit to Canada from June 10 to 18, 1986. Mr. [redacted] also stated that the applicant had made a "great contribution towards the development of this organization and generous activities in the Bengali community for this organization."

7. A copy of an October 10, 1992, affidavit from [redacted], in which he stated that he met the applicant in June 1982, when he lived with his uncle in Elmhurst, New York.

8. A copy of a September 4, 1990, affidavit from [redacted] in which he stated that he had known the applicant since 1982, and that the applicant visited Canada from June 10 to 18, 1986. The affiant did not state the circumstances surrounding his initial acquaintance with the applicant, that the applicant lived in the United States throughout the requisite period, or indicate the basis of his knowledge regarding the applicant's visit to Canada.

The record also contains September 10, 2003, sworn statements from [redacted] who stated that he had known the applicant since November 1981, and [redacted], who stated that he "personally" knew that the applicant appeared for a legalization interview on September 8, 1987.

On each of the Forms I-687 applications he completed, the applicant alleged an affiliation with different organizations. On the 1987 application, the applicant stated that he was associated with the Islamic Council of America, Inc. and the Bangladesh Society. On the 1991 application, the applicant identified only the Islamic Council of America, Inc., and on the 2005 application, the applicant denied an association with any organization. Although he submitted a letter from who stated that the applicant had contributed greatly to the Islamic Council of America, Inc., [redacted] did not identify the dates of the applicant's association with the organization, his address at the time of his association, or whether the information was taken from the organization's records, as required by 8 C.F.R. § 245a.2(d)(3)(v).

The affidavits and supporting statements submitted by the applicant lack sufficient detail that would support the affiants statements regarding their knowledge and acquaintance with the applicant during the qualifying period. [redacted] and [redacted] provided only general information regarding their initial acquaintance with the applicant, stating only that they met him at a "community gathering in Queens." Neither provided sufficient information that would date their relationship with the applicant. Additionally, other affiants, including, [redacted] and [redacted] did not indicate how they met the applicant or how they dated their acquaintance with him. The applicant submitted no contemporaneous documentation of his presence and residence in the United States during the requisite period.

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 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 as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*. 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.