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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

MSC-05-250-11928

Office: NEW YORK

Date: NOV 13 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 had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and that he is otherwise eligible for adjustment of status under this section.

On appeal, the applicant's representative stated that due weight was not accorded the witness affidavits that testify to the applicant's presence in the United States since before January 1, 1982.

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).

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.

Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

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 7, 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 showed his only address during the requisite period to be [REDACTED] from August 1981 to September 1996. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing.

At his interview with an immigration officer on March 9, 2006, the applicant provided an affidavit from Norman Dell dated October 18, 1989. [REDACTED] stated that the applicant has lived with him at [REDACTED] from August 1981 to the present time. This information is inconsistent with the information provided by the applicant on Form I-687, where the applicant indicated he lived only at [REDACTED] during the requisite period. This inconsistency calls into question whether the applicant resided in the United States during the requisite period.

In response to a Notice of Intent to Deny issued on March 9, 2006, the applicant provided an additional affidavit and a declaration. In his declaration, [REDACTED] stated that he met the applicant at [REDACTED] "when he came with his family to buy cloth. [REDACTED] confirmed the applicant visited his house and [REDACTED] visited the applicant at his house. This declaration fails to specifically confirm the applicant resided in the United States during the requisite period. The applicant also provided an affidavit from [REDACTED] stated that he met the applicant in December 1981 at the [REDACTED]. Since then, they kept in touch and

visited each other once in a while. [REDACTED] stated, "He go back to Africa long time he come to visit us once [in] a while." This affidavit also does not specifically confirm the applicant resided in the United States during the requisite period.

The record also includes an affidavit from [REDACTED] dated August 19, 2001. [REDACTED] stated that he has personally known the applicant and to his knowledge the applicant resided in New York City from November 1981 to the present. This affidavit fails to explain the origins of his knowledge of the applicant's continuous residence. As a result, it is found to lack sufficient detail.

The record includes an affidavit from [REDACTED] dated October 17, 1991. [REDACTED] stated that he has been acquainted with the applicant and that, to his knowledge, the applicant resided at [REDACTED] Bronx, New York from August 1991 to present. [REDACTED] is able to determine the date of the beginning of his acquaintance with the applicant because he met the applicant in 1981 selling African outfits at the corner of [REDACTED]. The longest period during the residence described in which [REDACTED] did not see the applicant was one month. The information provided by [REDACTED] is inconsistent with the information provided by the applicant on Form I-687, where the applicant indicated he lived only at [REDACTED] during the requisite period. This inconsistency calls into question whether the applicant resided in the United States during the requisite period.

The record contains a declaration from [REDACTED] public information [official] for [REDACTED] in New York, dated October 20, 1989. In this declaration, [REDACTED] stated that the applicant is a member of the Muslim community and has been "here" since November 1981. The applicant attends Friday and other prayer services at the [REDACTED]. This declaration is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant failed to list his involvement with [REDACTED] on Form I-687 when asked to list affiliations, associations, churches, etc. In addition, this declaration fails to conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, establish how the author knows the applicant, or establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

In denying the application, the director determined the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and that he is otherwise eligible for adjustment of status under this section. The director erroneously stated that the applicant submitted no primary or secondary evidence of his physical presence or unlawful residence in the United States during the statutory period, although the applicant did submit secondary evidence in support of his residence in the United States during the requisite period, in the form of affidavits and declarations.

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 that lack sufficient detail, fail to specifically confirm the applicant resided in the United States during the requisite period, or conflict with the applicant's statements. Specifically, the affidavits from [REDACTED] are

inconsistent with the applicant's statements on Form I-687. The declaration from [REDACTED] and the affidavit from [REDACTED] fail to specifically confirm the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] lacks sufficient detail. The declaration from [REDACTED] conflicts with the applicant's statements on Form I-687 and does not conform to regulatory standards.

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 I-687 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.