

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

LI

FILE:

MSC-05-245-10794

Office: NEW YORK

Date:

SEP 06 2007

IN RE:

Applicant:

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, 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 prove by a preponderance of the evidence that he 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 is otherwise eligible for adjustment of status under this section. The director also noted that an affiant who had claimed to be the applicant's dentist was not listed by the New York State Physician Reference, New York State Professions, and the American Medical Association at any time. As a result, the director denied the application.

On appeal, the applicant attempted to explain his difficulty in obtaining evidence to support his claim, suggested the director may have made a mistake regarding the applicant's physician, and provided a current address for the physician. Lastly, the applicant reiterated that he meets the residency and presence requirements for temporary resident status.

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 Immigration and Naturalization Service (INS) 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 2, 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 Astoria, New York, during the requisite period: [REDACTED] from October 1981 to January 1985; and [REDACTED] from March 1985 to February 1990. At part #31 where applicants were asked to list all affiliations or associations, the applicant wrote, "N/A." At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following absence during the requisite period: family visit to Pakistan from January 1985 to March 1985. With his application, the applicant included only an affidavit from [REDACTED] as evidence of his residence in the United States during the requisite period. [REDACTED] stated that he has known the applicant since 1982 when they met at a concert in Queens, New York. Since then, [REDACTED] and the applicant "are friends and see each other often." This affidavit fails to confirm the applicant resided in the United States for any specific portion of the requisite period. In addition, this affidavit fails to confirm the applicant resided in the United States prior to January 1, 1982.

The applicant was interviewed by an immigration officer on March 9, 2006. At the interview, the applicant stated that he entered the United States in October 1981. When asked to list the times he

left the United States since entry, the applicant only listed one trip during the requisite period, which was a trip to Pakistan from May 1987 to June 1987. This statement is found to be inconsistent with the applicant's statement on Form I-687 where he indicated his only absence from the United States during the requisite period was from January 1985 to March 1985. This inconsistency calls into question whether the applicant continuously resided in the United States throughout the requisite period.

At the interview, the applicant submitted multiple affidavits. Only the affidavit from [REDACTED] bears on the issue of the applicant's residence in the United States during the requisite period. In this affidavit [REDACTED] stated that he knows through personal knowledge that the applicant has been residing in the United States "for many years." [REDACTED] failed to explain the nature of his relationship with the applicant or the manner in which he became acquainted with the applicant. Mr. [REDACTED] also failed to confirm the applicant resided in the United States for any portion of the requisite period. Lastly, the affidavit has been signed by a notary public, but only the month and year of the date, as opposed to the year, are provided. This calls into question the authenticity of the affiant's signature.

In response to a Notice of Intent to Deny (NOID) issued on March 17, 2006, the applicant provided additional evidence including numerous affidavits and other documents. In a form affidavit, [REDACTED] confirmed that he has known the applicant since April 1984. The affiant stated that the applicant was continuously present in the United States from January 1, 1982 to May 4, 1988. The affiant's claim to know that the applicant was continuously present throughout the requisite period is inconsistent with his statement that he did not meet the applicant until April 1984. This inconsistency calls into question whether the affiant can confirm the applicant resided in the United States during the requisite period. In his affidavit, [REDACTED] claimed both that he met the applicant in November 1981, when the applicant was approximately 24 years old, and that the applicant is a childhood friend of his. This inconsistency calls into question the affiant's ability to confirm the applicant's residence in the United States during the requisite period.

The applicant also submitted a signed letter from [REDACTED] confirmed that the applicant was first examined by him in December 1981 and then was seen by [REDACTED] on the following additional dates: January 12, 1982; April 27, 1983; September 20, 1984; March 15, 1985; November 12, 1986; and February 15, 1987. Although not required, [REDACTED] did not include specific address information for the applicant during the requisite period. The letter from [REDACTED] is not notarized and is not accompanied by identity documentation. The letter is also not accompanied by copies of dental records. The letter serves as evidence that the applicant was present in the United States for one day per year from 1981 to 1987 but does not specifically confirm his continuous residence throughout the requisite period.

The applicant also included a receipt from Madison Cleaners dated June 7, 1982. This receipt includes the name [REDACTED] but does not include address information for the applicant. As a result, it does not establish that the applicant resided in the United States during the requisite period. The applicant also included a letter dated October 10, 1987 from the Islamic Council of America Inc. (Islamic Council). This letter confirmed that the applicant was known to the Islamic Council since

1981 and came to the mosque at [REDACTED] every Friday. This letter does not conform to the standards established in 8 C.F.R. § 245a.2(d)(3)(v) for attestations to the applicant's residence by churches, unions or other organizations. Specifically, this letter does not state the address where the applicant resided during the membership period and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). In addition, the letter appears to be inconsistent with the information provided on Form I-687. Specifically, the applicant failed to list the Islamic Council or the mosque he attended every Friday when asked at part #31 to list all affiliations or associations in the United States. This calls into question whether the applicant actually was affiliated with the Islamic Council and whether they can actually confirm he resided in the United States during the requisite period.

The applicant included a photocopy of a letter that appears to have been sent to the applicant in New York at some time during the 1980s, but the year of the date stamp is illegible. The applicant also included an affidavit dated August 6, 1987 from [REDACTED] stated that he first met the applicant in November 1981 in Astoria at the house of a friend; confirmed that he saw the applicant whenever he visited this friend since November 1981; and confirmed that he saw the applicant every month since November 1981. Although not required, the applicant provided no documentation of the affiant's identity or presence in the United States during the requisite period. The applicant also provided a copy of a money order issued to the "INS Service" from the applicant on October 12, 1987. The applicant also provided an affidavit from [REDACTED] with Dream Land Inc. Construction. This affidavit confirms that the applicant worked at Dream Land Inc. Construction from April 1985 through August 26, 1987. This affidavit does not conform to standards established in 8 C.F.R. § 245a.2(d)(3)(i) for employment letters. Specifically, this affidavit does not include the applicant's address at the time of employment; his duties within the company; whether the information was taken from official company records; where the records are located; and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

In denying the application, the director noted that [REDACTED] was not listed by the New York State Physician Reference, New York State Professions, and the American Medical Association at any time. The director appears to have erred in this statement. On the website for the New York State Education Department Office of the Professions, license information for [REDACTED] can be found that indicates he was first licensed on November 6, 1981 and is registered as a dentist through the last day of December 2009. As a result, this aspect of the director's decision is withdrawn. The director determined the applicant failed to prove by a preponderance of the evidence that he 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 is otherwise eligible for adjustment of status under this section.

On appeal, the applicant attempted to explain his difficulty in obtaining evidence to support his claim, suggested the director may have made a mistake regarding the applicant's physician, and provided a current address for the physician. Lastly, the applicant reiterated that he meets the residency and presence requirements for temporary resident status.

In summary, the applicant has provided only limited contemporaneous evidence of residence in the United States relating to the 1981-88 period; his statements in the record of the interview conflict with the statements on Form I-687; and his affidavits fail to confirm the applicant resided in the United States for any specific portion of the requisite period, fail to confirm the applicant entered the United States prior to January 1, 1982, fail to provide detail regarding the affiant's relationship with the applicant, contain incomplete notary information, are internally inconsistent, fail to conform to regulatory standards, or are inconsistent with the information provided on Form I-687. Specifically, [REDACTED] letter fails to confirm the applicant resided in the United States for any specific portion of the requisite period and that applicant entered the United States prior to January 1, 1982. [REDACTED] affidavit fails to explain how the affiant and the applicant became acquainted and does not confirm the applicant's residence in the United States during the requisite period. In addition, complete date information is not provided in connection with the notary's signature on this affidavit. [REDACTED] and [REDACTED] affidavits were internally inconsistent. The letter from the Islamic Council fails to conform to regulatory standards and conflicts with the information provided on Form I-687. One key piece of evidence that supports the applicant's claim of residence throughout the requisite period, the letter from [REDACTED] is not notarized. In addition, the letter does not specifically confirm the applicant resided in the United States continuously throughout the requisite period. Another key other piece of evidence tending to confirm the applicant's residence throughout the requisite period, the letter from [REDACTED] was not accompanied by documentation of [REDACTED] identity or presence in the United States. This type of supporting documentation is not specifically required. However, numerous inconsistencies exist within other aspects of the evidence presented by the applicant. As a result, without additional supporting documentation the letters from [REDACTED] and [REDACTED] are insufficient to prove by a preponderance of the evidence that the applicant resided in the United States throughout 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 I-687 application, record of his interview with the immigration officer, and supporting affidavits; and given 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.