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FILE: MSC-05-029-10053 Office: NEW YORK Date: **APR 23 2008**

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:

SELF-REPRESENTED

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.

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. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director did not give adequate weight to his evidence. The applicant further asserts that his application is supported by sufficient evidence to warrant an approval.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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. 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on October 29, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in New York, New York from November 1981 until January 1993. At part #33, the applicant showed that he has been self-employed in the occupation of “peddler and odd job” in New York, New York from April 1982 until present. The applicant failed to provide any other specific information on his employment in the United States.

The applicant submitted the following documents in support of his application:

A letter from the Permanent Secretary, Murid Islamic Community in America, dated January 31, 2004. This letter in part provides, “[REDACTED] is a well respected member in good standing of our Organization ‘Murid Islamic Community in America’ since 1984, located at 46 Edgecombe Avenue, New York, NY 10030 which

existed since 1984 but had been coorporated [sic] in 1991. His membership card Number is 1586.” Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), letters from religious organizations should provide the address where the applicant resided during the requisite period and establish the origin of the information being attested to. This letter does not comply with the guidelines delineated in the regulations. The letter does not state the address where the applicant resided during the membership period. The letter also fails to establish the origin of the information the author has attested to. Furthermore, the letter provides the author’s title, but not his name, therefore his identity is unknown. Finally, the letter refers to the applicant’s membership card number, but the applicant has not submitted a copy of his membership card. Given these deficiencies, this letter is of minimal probative value as evidence of the applicant’s continuous residence in the United States since 1984.

- An affidavit from [REDACTED] dated July 12, 2004, which provides, “I, [REDACTED] have known [REDACTED] for many years, having first met him in 1985. Since that time, I have found him to be a very reliable and responsible individual. I see him occasionally, and he remains to be a friendly and considerate young man.” This affidavit contains several apparent deficiencies. First, this affidavit does not describe Ms. [REDACTED]’s first acquaintance with the applicant. Relevant information would include how and where [REDACTED] first met the applicant. Notably, there is no indication in this affidavit that [REDACTED] first met the applicant in the United States. Second, this affidavit fails to provide any information on [REDACTED]’s contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. Finally, the affidavit does not provide any information on the location of the applicant’s residence during the requisite period. It is reasonable to expect [REDACTED] to provide this information since she claims to have known the applicant since 1985. Given these deficiencies, this affidavit is of no probative value as evidence of the applicant’s continuous residence in the United States since 1985.

- An affidavit from [REDACTED] dated June 17, 2004, which provides, “I, [REDACTED], states [sic] that [REDACTED] lived with his uncle, [REDACTED] from about November 1981 at [REDACTED] until he moved in early 1992. Since then I have seen him occassionly [sic] and we remain friendly.” This affidavit fails to show [REDACTED] direct personal knowledge of the applicant’s residence in the United States. First, the affidavit does not describe [REDACTED]’s first acquaintance with the applicant. Relevant information would include how, when and where [REDACTED] first met the applicant. Second, the affidavit fails to indicate whether [REDACTED] has personal knowledge of the applicant’s residence with [REDACTED] at [REDACTED]. Finally, this affidavit fails to provide any information on [REDACTED]’s contact with the applicant in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. Given these deficiencies, this affidavit is of no probative value as

evidence of the applicant's continuous residence in the United States since November 1981.

- An affidavit from [REDACTED], dated June 15, 2004, which [REDACTED] states [sic] that [REDACTED] and his brother, [REDACTED] lived with their uncle, [REDACTED], from about November 1981 at [REDACTED] until they all moved in early 1992. Since then I have seen them occasionally and we remain friendly." This affidavit is nearly identical to the affidavit issued on June 17, 2004. It does not provide any additional relevant information related to the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated July 17, 2004, which provides, "[REDACTED] lived with me at [REDACTED] in Toronto about August 1981, until he moved to New York USA in November 1981. He came back to Canada and lived with me at [REDACTED] about April 1987, until he moved back to New York USA in June 1987." The affidavit fails to explain whether [REDACTED] was in contact with the applicant when he was living in the United States during the requisite period. Moreover, the applicant indicated on his application that since his residence in the United States, he has made one trip to Canada from June 1987 until July 1987. This testimony is inconsistent with [REDACTED]'s affidavit, which provides that the applicant resided at her home in Canada from April 1987 until June 1987. Given these deficiencies, this affidavit is of no probative value as evidence of the applicant's continuous residence in the United States since November 1981.
- A letter from the applicant's father written in French with a certified English translation. This letter provides, "I, undersigned [REDACTED], merchant, [REDACTED] at Kaolack declared having authorized my son [REDACTED] traveled a [sic] Canada on August 1981." This letter does not provide any information on the applicant's residence in the United States. Therefore, it is of no probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- An affidavit from the applicant attesting to this eligibility for temporary resident status. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. Therefore, this letter alone is not evidence of the applicant's continuous residence in the United States during the requisite period.

On February 16, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the affidavits the applicant submitted as corroborating evidence fail to include documents identifying the affiant, proof that the affiant was in the United States during the statutory period, and proof that the affiant has direct personal knowledge of the events being attested. The director asserted that the applicant signed a sworn statement attesting to his absence from the United States for the period of April 1987 until June 1987. The director

determined that this absence represents a clear break in the continuous residence and physical presence requirements. The director also determined that this testimony is inconsistent with the application, and as a result casts doubt upon the information he provided. The director concluded that the applicant has not met his burden of proof in the proceeding.

The director was correct in her overall determination that the applicant has not met his burden of proof. However, her analysis contains a few errors. The director determined that the applicant's absence from the United States from April 1987 until June 1987 represents a clear break in the continuous residence and physical presence requirements. The director notes, "[t]he length of your absence for three (3) months so far exceeds the regulatory limits defined in 8 CFR 245a.4(b)(8) that continuous residence cannot be considered unbroken." The director's citation to 8 C.F.R. § 245a.4(b)(8) is in error. The correct citation is at 8 C.F.R. § 245a.2(h)(1), which provides:

An applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Pursuant to this regulation, the director must first determine whether the applicant's absence from the United States was for a period exceeding 45 days. However, the director has failed to make such a determination. The applicant's testimony provides, "I went to Canada in April of 1987, for about three months from April to June of 1987." The director has not determined the exact dates of the applicant's absence from the United States. It is possible for the applicant to have traveled at the end of April and returned at the start of June, thereby not exceeding 45 days. Since the exact length of the applicant's absence from the United States has not been determined, the finding that the applicant's absence caused a break in the continuous residence and physical presence requirement is withdrawn. Nevertheless, the director's action must be considered to be harmless error as 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).

In response to the director's NOID, the applicant submitted a letter, which provides, "because of recent occurrences I am going to have to travel to my homeland because my mother passed away today, on February 27, 2006. I wish now that I am going through these harsh times you can extend my date of submission to verify to the USCIS that I do qualify for LULAC." The applicant submitted as evidence of his travel to his home country, Senegal, copies of the following documents: his Form I-512L, Authorization for Parole; the biographical page of his passport; his mother's death certificate; and his birth certificate.

On August 1, 2006, the director issued a denial notice to the applicant. In denying the application, the director found that the applicant did not submit any additional evidence of his residence in the United States. The director denied the application for the reasons indicated in the NOID.

On appeal, the applicant asserts that the director did not give the evidence he submitted adequate weight. The applicant notes that he submitted affidavits attesting to his presence in the United States from 1981 until 1988. The applicant further asserts that he responded to the NOID with additional evidence and a rebuttal indicating the reasons for a positive outcome of his case. Lastly, the applicant asserts that his application is supported by sufficient evidence to warrant the approval of his application.

Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The letter from the Murid Islamic Community in America is, at best, of minimal probative value. The remaining supporting documents are of no probative value for the reasons stated above. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of documentary evidence. See 8 C.F.R. § 245a.2(d)(3). However, the applicant has not submitted any additional relevant documentation either in rebuttal to the NOID or on appeal. The applicant's failure to provide sufficient documentary evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). Pursuant to *Matter of E-M-*, the applicant has not established that his claim is "probably true" under the preponderance of the evidence standard.

In this case, the absence of credible and probative 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.