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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-018-21933

Office: NEW YORK

Date: **OCT 10 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. 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 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 (together comprising the I-687 Application). The director issued a Notice of Intent to Deny (NOID) on September 26, 2005. The director stated in the NOID that the applicant had failed to establish his eligibility for temporary resident status. Specifically, the director found that the affidavits submitted by the applicant were neither credible nor amendable to verification. The applicant was provided with thirty days in which to provide additional evidence in support of his application. The applicant did not submit additional evidence in response to the NOID. The director denied the application on January 26, 2006, for the reasons stated in the NOID.

On appeal, the applicant states that he did not receive the Notice of Intent to Deny (NOID) because he was in Bangladesh when the NOID was issued. The applicant therefore requests that the Notice of Decision be withdrawn.

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)(1).

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. See 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).

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 applicant 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.

As noted above, the applicant states that he never received a NOID. However, the record shows that a NOID was sent to the applicant at his address of record at [REDACTED] New York, NY 10002. The record shows that the NOID was sent by certified mail and bears a postmark dated September 28, 2005. On the front of the envelope is a “Return to Sender” stamp along with the notation “UNCLAIMED.” Service is effective upon the mailing of a decision to a person at his last known address. 8 C.F.R. § 103.5a(a)(1). Because the NOID was sent to the applicant at his last known address by certified mail and there is proof of attempted delivery, the NOID was properly served on the applicant.

Thus, the only issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 18, 2004.

In support of his application, the applicant submitted a copy of a Form I-687 application purportedly submitted by his father, [REDACTED] in 1991. This document does not indicate that the applicant resided in the United States during the requisite period, and is therefore not probative of the applicant’s eligibility for temporary resident status. The applicant also submitted copies documents that his father, [REDACTED], submitted in support of his Form I-687 application. These include witness affidavits, employer letters, and a letter from the Islamic Council of America, Inc. These documents relate only to the applicant’s father, they contain no references to the applicant himself. Therefore, these documents will not be given any weight as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also submitted a number of affidavits, declarations and letters in support of his application. Specifically, he submitted the following:

- An affidavit from [REDACTED] dated October 8, 2004. The affiant states that the applicant came to the United States with his father in 1981. The affiant also states that the applicant and his father lived with him from October 1982 until December 1995 at [REDACTED], New York, NY. The record also contains a declaration by [REDACTED] which is not signed or dated. Mr. [REDACTED] again states in the declaration that the applicant and the applicant's father lived with him from October 1982 until December 1995. Mr. [REDACTED] also indicates in his declaration that he entered the United States in September of 1982. Because [REDACTED] entered the United States in September of 1982, it is not clear that he has personal knowledge of the applicant's alleged entry into the United States prior to January 1, 1982. Further, the affidavit and declaration lack probative details regarding [REDACTED] relationship with the applicant. Given these deficiencies, the affidavit and declaration by [REDACTED] will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated October 8, 2004. The record also contains an undated, unsigned declaration from [REDACTED]. The affiant claims that he met the applicant in June 1981, and that the applicant and his father lived in the same building as the affiant, located at [REDACTED], beginning in 1982. In addition, the affiant states that he accompanied the applicant and the applicant's father when they attempted to file legalization applications in February of 1988. The director noted in the NOID that [REDACTED] had been contacted by telephone, and was unable to provide any information regarding the nature and frequency of his contact with the applicant during the requisite period. The affiant also failed to provide such probative details in his affidavit and declaration. Given this lack of probative detail, the affidavit and declaration from [REDACTED] will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from the applicant's father, [REDACTED], which is unsigned and undated. The declarant states that he and the applicant came to the United States, together, prior to January 1982. The declarant further states that he and the applicant resided in the United States throughout the requisite period. As noted above, the applicant also submitted copies of a Form I-687 application and supporting documents purportedly submitted by his father. There is no record indicating that [REDACTED] has been granted temporary resident status, therefore it has not been established that [REDACTED] resided in the United States throughout the requisite period. Given that it has not been established that the declarant resided in the United States during the requisite period, this declaration will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A declaration from [REDACTED] which is unsigned and undated. The declarant states that he met the applicant in 1984 at [REDACTED] in Brooklyn, New York. The declarant does not provide details regarding his initial meeting with the applicant and does not explain the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this declaration will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] which is unsigned and undated. The declarant states that he met the applicant in December of 1981 when he and the applicant were working at the same place. The declarant indicated that he was employed at Nupur Indian Restaurant during the requisite period. The applicant also listed employment at Nupur Indian Restaurant on his Form I-687 application. However, the declarant does not provide the specific dates of his employment at Nupur Indian Restaurant. Therefore, the duration of the declarant's contact with the applicant is not clear. Further, the declarant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this declaration will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] which is undated. The declarant states that he met the applicant in 1981 at Madina Masjid in New York. The declarant also states that the applicant and his father were his neighbors beginning in October of 1982. The declarant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period, stating only "[w]e share parties, holiday celebrations, community gatherings, etc." Given this lack of detail, the declaration has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] which is undated. The declarant states that he met the applicant in June of 1981 at a "[c]ommunity gathering at Fulton street." The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given this lack of probative detail, the declaration has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] which is not signed or dated. The declarant states that he met the applicant and his father in June of 1981 when they came to his home. The declarant does not provide details regarding the nature and frequency of his contact with the applicant during the requisite period. Lacking such probative detail, this declaration will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A declaration from [REDACTED] which is not signed or dated. The declarant states that he met the applicant and his father in June of 1981 when they came to him for a “job and shelter.” The declarant does not provide details regarding the nature and frequency of his contact with the applicant during the requisite period, stating only that they “shared a lot of parties, get together and other work purpose meetings since 1981.” Lacking such probative detail, this declaration will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also submitted declarations from family members in Bangladesh. Specifically, the applicant submitted a declaration from his mother and three siblings. None of these declarations are dated or signed. These declarations are fill-in-the blank forms. Part 9 of the form asks “How do you know that the applicant came to the US before 1982.” In response, the applicant’s mother, [REDACTED], states that “my husband left with my son in 04/1981.” Each of the applicant’s siblings responded to this question by stating “my mother.” Thus it appears that the applicant’s siblings do not have personal knowledge of the applicant’s residence in the United States prior to 1982. Part 14 of the declaration form states “Between 1982 and May 1988 how do you know the applicant was living in the U.S. – describe all of your contacts with the applicants between 1982 and 1988.” In response, the applicant’s mother and each of his siblings put “N/A.” Thus it is not clear that any of these declarants have personal knowledge of the applicant’s residence in the United States during the requisite period. Given these deficiencies, these declarations will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also submitted letter from previous employers. Specifically, there is a letter from [REDACTED], President of Nupur Indian Restaurant, dated September 8, 2004. The letter states that the applicant worked at Nupur Restaurant from July 1981 until December 1987. There is also a letter signed by the President of Eagle Construction (name illegible), dated October 12, 2004. The letter states that the applicant was employed by Eagle Construction from March 1988 until March 1999. These letters are deficient in that they do not comply with the regulation relating to past employment records. For example, the letters do not provide the applicant’s address and do not provide the exact period of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, these letters cannot be verified because these businesses are no longer at the numbers or addresses listed on the letterhead. Further, it is noted that the address listed on the Eagle Construction letterhead— [REDACTED], Brooklyn, NY—is the same address that the applicant has listed as his residence from May 1981 until September 1982. Given these deficiencies, these letters will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The evidence must be evaluated not by its quantity but by its quality. *Matter of E-M, supra* at 80. 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 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 for the requisite period 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.