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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-05-271-11366

Office: NEW YORK

Date:

OCT 24 2008

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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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. The director issued a Notice of Intent to Deny (NOID) on March 6, 2006. 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 did not establish the applicant's presence in the United States prior to January 1, 1982. The director further found that a letter from a doctor which had been submitted by the applicant lacked credibility. Counsel for the applicant submitted a written response to the NOID, but did not submit any additional evidence. The director denied the application on January 23, 2007 for the reasons stated in the NOID.

On appeal the applicant states that he did not receive the NOID. The applicant states that if he had received the NOID, he would have submitted additional documentation to remedy any perceived deficiencies. However, the applicant has not submitted additional documentation in support of his appeal. The applicant also states that the director's decision was an abuse of discretion and that the director did not have "good and sufficient cause" to deny the 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 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)(1) 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 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 the applicant never received a NOID. However, the record shows that a NOID was sent to the applicant at the address listed by the applicant on his Form I-687 application. The record shows that the NOID was sent by certified mail and bears a postmark dated March 14, 2006. There is a label affixed to the front of the envelope which states “UNCLAIMED.” Further, the NOID was also sent to the applicant’s attorney of record, and the attorney responded to the NOID on April 11, 2006. Because the NOID was sent to both the applicant and to applicant’s attorney of record, it is determined that the NOID was properly served upon 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 applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 28, 2005. The applicant submitted the following documents in support of his application:

- An affidavit from [REDACTED] dated June 13, 2005. The affiant states that he met the applicant at a friend’s house in 1985. The affiant does not claim to have knowledge of the applicant’s residence in the United States during the requisite period, nor does the affiant provide any details regarding the nature and frequency of his contact with the applicant. Given these deficiencies, this affidavit will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated June 14, 2005. The affiant states that he met the applicant in 1986 during religious services at a mosque in Manhattan, New York. The affiant does not claim to have knowledge of the applicant's residence in the United States during the requisite period, nor does the affiant provide any details regarding the nature and frequency of his contact with the applicant. Given these deficiencies, this affidavit will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of a letter from [REDACTED] dated May 18, 1982. In the letter, [REDACTED] states that he has been treating the applicant for depression and anxiety disorder since November 20, 1981. The director found that this letter was not credible because the applicant testified before an immigration officer that he first entered the United States in December 1981. The applicant has failed to explain this discrepancy. Further, although the letterhead lists the name as [REDACTED], the signature block lists the name as "[REDACTED]." and the letter appears to be signed "[REDACTED]" It seems unlikely that the author of the letter would have confused his first and last name. Finally, an internet search shows that [REDACTED] is "board certified and fully accredited in vascular surgery, specializing in the diagnosis and treatment of venous diseases."<sup>1</sup> It seems doubtful that a vascular surgeon would treat an individual for depression and anxiety. Given these deficiencies, this letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Although the director did not discuss it, the record also contains a copy of a lease agreement which bears the applicant's name and is dated December 10, 1981. According to this lease, the applicant and another individual were to rent an apartment located at [REDACTED] Astoria, NY from December 15, 1981 until December 14, 1983. The name of the landlord is listed on the first page of the lease as "[REDACTED]" However, the landlord's name is listed on the signature block as "[REDACTED]" and it appears to be signed "[REDACTED]" This is a material inconsistency in that it is unlikely that the landlord would have three variations of his name on one document. Given this inconsistency, this document will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted the following letters from previous employers:

- A letter from [REDACTED] Manager of the India Maharaja Restaurant. The letter, dated December 28, 1983, states that the applicant worked at the India Maharaja Restaurant from January 1982 to December 1983.
- A letter from [REDACTED] General Manager of Lion Leather Products, Inc. The letter, dated December 29, 1985, states that the applicant was employed by Lion Leather Products, Inc. from February 1984 until December 1985.

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<sup>1</sup> Found on the New York State Physician Profile website at [http://www.nydoctorprofile.com/results\\_medinfo.jsp](http://www.nydoctorprofile.com/results_medinfo.jsp)

- A letter from [REDACTED], Stock Manager for [REDACTED] Hardware. The letter, dated March 26, 1988, states that the applicant was employed by [REDACTED] Hardware as a stock person from February 1986 until March 1988.

None of the employers listed in the above letters currently exist at the address or phone numbers provided in the letters. This is not surprising considering that each of these letters was purportedly written more than twenty years ago. However, the authenticity of at least one of these letters is questionable. Specifically, the letter from Lion Leather Products, Inc. lists the company address as [REDACTED] Brooklyn, NY 11237. An internet search revealed that the address [REDACTED] does not exist in Brooklyn, New York. Instead, [REDACTED] is located in Ridgeway New York and the zip code is 11385. It is unlikely that the Lion Leather Products company would have an inaccurate address listed in its company letterhead. Given the lack of verifiability and questionable authenticity, these letters will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a letter from the Customer Relations Department of the Hotel Howard, dated October 14, 1982. The letter references a stay at the hotel by the applicant on September 26, 1982. The letter is addressed to the applicant at [REDACTED], Brooklyn, NY, which is the address provided by the applicant for that time period on his Form I-687 application. The Hotel Howard does not currently exist at the address and phone number provided in the letterhead, thus the authenticity of this letter cannot be verified. Therefore, this letter 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 photocopies of invitations that he purportedly received during the requisite period. One is an invitation to a wedding ceremony to take place in New York on May 20, 1982. The other is an invitation to attend a religious function at The Islamic Center of New Jersey to take place on December 6, 1983. These are both printed invitations which contain blank spaces for the name and address of the invitee. On each invitation, the applicant's name and address are handwritten in the blank space. It is impossible to verify whether these invitations were actually sent to the applicant. Therefore, these invitations 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 during the entire requisite period. 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 and documents of questionable authenticity, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period. 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.