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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 19 2009
MSC 05 278 13888

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. 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.

John F. Grissom
Acting 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 denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) relied on its records to state that one of the affiants, [redacted] was not in the United States prior to September 9, 1987. Counsel explains that the affiant provided his address and telephone number, however, the USCIS relied on its own records without verifying the information with the affiant. Counsels asserts that the USCIS did not comply with the settlement agreement as the director denied the applicant's application because of his failure to provide evidence other than affidavits to meet the continuous residence requirement. Counsel provides a copy of the certificate of incorporation of the Muslim Community Center of Brooklyn, New York, Inc. to show that it's a legal entity, evidence that [redacted] is a licensed New York State Notary Public and an affidavit from [redacted] for consideration.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the

sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

During the Form I-687 application interview, the applicant claims that he first entered the United States without inspection by driving across the Canadian border in November 1980.

The applicant submitted three declarations from friends and a letter signed by the general secretary of the Muslim Community Center of Brooklyn, New York, Inc. to establish his initial entry and residence in the United States during the requisite period. In their declarations, and state that they know the applicant resided at Brooklyn, New York, since 1980 and 1986, respectively. However, the applicant claimed on his Form I-687 application at item 30, that he resided at , from November 1980 to December 1989. states that he worked in a rug shop and that the applicant worked with a construction company but the declarant fails to mention the names and locations of either of these companies. also states that they would eat lunch together

since they were good friends. [redacted] states that the applicant used to pray with the congregation on weekends and helped out with the Sunday school. [redacted] also states that they used to meet at the Makki Masjid at 1089 Coney Island Avenue, Brooklyn, New York, and pray with the congregation every day. The applicant never claimed to be affiliated with this organization on his Form I-687 application. [redacted] attests to the applicant's good moral character but the other declarants provided no other information concerning the applicant.

Upon review, the AAO finds that the declarations do not include sufficient detailed information about the claimed relationships spanning from 22 to 27 years and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, shared activities and hobbies. The declarants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The declarations do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

The declarations do not contain sufficient detail to establish the reliability of their assertions. The declarations are insufficient to establish the applicant's 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 requisite period. Therefore, the declarations have little probative value.

The applicant provided a letter from the Muslim Community Center of Brooklyn, New York, Inc. In the letter, signed by the general secretary, [redacted] and Chairman of the Working Committee, [redacted] and witnessed by [redacted], it states that the applicant has been participating in Friday congregation since 1982. However, on the applicant's Form I-687 application at item 31, the applicant does not claim affiliation with this organization. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter signed by the general secretary, [redacted], does not contain most of the aforementioned requirements and can only be given nominal weight.

On appeal, counsel states that the USCIS failed to comply with the settlement agreement by denying the applicant's benefits because of his failure to provide evidence other than affidavits to meet the

continuous residence requirements. Counsel asserts that the director did not take into the account the passage of time and the difficulties in obtaining corroborative documentation. However, the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, when each declaration was taken individually and together, the applicant has not established his continuous residence in the United States since prior to January 1, 1982 and throughout the requisite period. The declarations provided little probative value and credibility to support the applicant's claim. Counsel also states that the director failed to verify the information given in the declaration with the affiant, [redacted] However, USCIS is not required to contact affiants to verify the veracity of the testimony. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.