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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: APR 0 6 2010
MSC 06 018 12403

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.

Perry Rhew
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 initially denied[1] and then reopened by the Director, New York, New York. The director subsequently denied the application again and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In the most recent denial, the director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying 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 and 8 C.F.R. § 245a.2(b)(1).

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 alien 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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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[1] The director initially denied the application for a lack of prosecution based upon the determination that the applicant had abandoned his application by failing to respond to a notice of intent to deny previously issued on November 22, 2005. However, the director subsequently determined that the applicant had submitted a response to the notice of intent to deny and did not abandon his application, and therefore, reopened the matter on August 27, 2008.

An alien applying 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, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on October 18, 2005. At part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the counsel indicated that the applicant was not affiliated or associated with any of the cited groups by listing "N/A." In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment since entry, counsel listed only "self-employed " without providing any information regarding the type of work the applicant performed or the dates he engaged in such work.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an employment affidavit containing the letterhead of , in Jersey City, New Jersey that is signed by president, Mr. stated that the applicant had been employed by this company as a temporary worker in 1984, 1985, and 1986. However, failed to provide the applicant's address at the time of his employment with , failed to state the applicant's duties, and did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, it must be noted that ., was not listed by counsel as one of the applicant's employers at part #33 of the Form I-687 application.

The applicant included a letter containing the letterhead of Consulate General of Pakistan in New York, New York that is signed by consular attaché Mr. stated that the applicant had been participating in functions organized by the Pakistani community and the consulate since 1985. Regardless, testimony is general and vague and he failed to either state how he knew the applicant or attest to the origin of his knowledge regarding the applicant's residence in the United States during the period in question.

The applicant provided a letter containing the letterhead of Idea Enhancement Inc., in Brooklyn, New York that is signed by , who listed his position as executive director. Mr. noted he had personally known the applicant since 1986 and working with him for some years in the local community. declared that the applicant had given his personal time to serve the youth and senior citizens of the community by assisting in a feeding program and providing transportation for children to school events.

The applicant submitted a letter containing the letterhead of the Pakistan Independence Day Parade and Fair Committee in New York, New York that is signed by , who

listed his position as secretary general. stated that the applicant had been joining the Pakistan day parade since 1985 and that he has been in good moral standing.

The applicant provided a letter containing the letterhead of the Muslim Community Center of , in Brooklyn, New York that is signed by , who listed his position as secretary. noted that that the applicant had been attending Friday prayer services since 1982 with attendance at Friday prayer services of the Makky Mosque at the same location of the Muslim Community Center of Brooklyn, Inc., since 1986.

The applicant included a letter containing the seal and letterhead of New World Al-Islam in America in Brooklyn, New York that is signed by , who listed his position as imam. declared that he had known the applicant since 1981 and that he, , and the applicant had been very involved in attending and organizing religious events and ceremonies over the years.

Nevertheless, , and all failed to provide the applicant's address during his affiliation with each of their respective organizations as required by 8 C.F.R. § 245a.2(d)(3)(v). In addition, it must be noted that counsel failed to list the applicant's association with , the Pakistan Independence Day Parade and Fair Committee, Muslim Community Center of Brooklyn, Inc., and New World Al-Islam in America at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant submitted letters that are on letterhead stationary and are signed by a and , respectively. Although both and noted that they had treated the applicant during the requisite period beginning in 1983 and 1984 respectively, the probative value of these letters is limited as neither nor provided corroborative medical records reflecting their treatment of the applicant.

The applicant provided affidavits and declarations that are signed by and , respectively. Although these affiants and declarants attested to the applicant's residence in this country for the requisite period or a portion thereof, their testimony is general and vague and lacks sufficient detail and verifiable information to substantiate his claim of continuous residence in this country for the period in question.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on March 6, 2009.

Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate his residence in this country during the period in question have been considered. However, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982 through the date he attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988. In addition, the record contains conflicting testimony relating to the applicant's employment history and his association with various organizations during the required period.

The absence of sufficiently detailed supporting documentation and existence of conflicting testimony seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 May 4, 1988 as required under section 245A the Act. 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.