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U.S. Citizenship
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FILE:

MSC-04-359-11150

Office: NEW YORK

Date: JUL 11 2007

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. 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel for the applicant asserts that the inconsistent information in the applicant's record is a result of the applicant's limited proficiency in English.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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, during the original legalization application period of May 5, 1987 to May 4, 1988, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record show that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on September 23, 2004. The applicant signed these forms under penalty of perjury, certifying that the information is true and correct. Part 30 of the application requests the applicant to list his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Astoria, New York from May 1981 until March 1985; [REDACTED] Fort Lauderdale, Florida from April 1985 until June 1987; and [REDACTED] Astoria, New York from October 1987 until December 2002. Part 33 of the application requests the applicant to provide his employment in the United States since entry. The applicant responded that he was employed as a “Helper” at Dewan Construction, located in Brooklyn, New York, from September 1981 until June 1983 and he was “Self-Employed” on a daily basis in construction labor at an unknown location from July 1983 until February 2004. Although this

information indicates that the applicant has continuously resided in the United States during the requisite period, documentation in the applicant's record seriously detracts from this claim.

The applicant's record contains numerous inconsistencies that undermine the credibility of his overall claim of continuous residence during the requisite period. The director's Notice of Decision provides that:

You stated that you came to the United States in May 1981. A Form G325A signed and dated by you states that you were residing in Bangladesh until September 1985. You stated that your only absence from the United States was July 1987 and yet you have children born in 1985, 1986, 1988 and 1990. There are still obvious discrepancies between your statement and the documentation you submitted and there is still a break in the requirement for continuous residence and physical presence that makes you statutorily ineligible.

On appeal, counsel for the applicant asserts that, "please note that Mr. [REDACTED] limited abilities to speak and write English resulted in him seeking friends, family and other individuals to assist in completing his form. It is the case that these individuals did not appropriately fill said forms, and either failed to include information or included incorrect information." Without documentary evidence to support this claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the assertions of counsel are inconsistent with documentation in the applicant's record. On June 2, 2005, the applicant signed a declaration prior to his legalization interview. This declaration provides that, [REDACTED] from Bangladesh born on 07-03-1957 swore under oath that you know how to read, speak, and write English and that you are prepared for the interview and all statement[s] made today at the interview is true to the best of knowledge and ability . . ." It should be noted that the applicant was given the opportunity to testify that he does not read, write and speak English and request a reschedule of the interview.

The record shows that the applicant filed at Form I-485, Application to Adjust Status, with CIS on May 13, 2002. Part 3B of this application requests the applicant to list his spouse and children. The applicant responded that he has four children born in Bangladesh: [REDACTED] born February 2, 1985; [REDACTED] born March 3, 1986; [REDACTED], born April 6, 1988; and [REDACTED], born May 10, 1990. The applicant filed with this application, a Form G-325A, Biographic Information Form, which provides that he married his wife, [REDACTED] on April 4, 1983 in Bangladesh. This form also provides that the applicant resided in Bangladesh from July 1957 until September 1985. The applicant's record also contains a copy of a Form I-687 application, signed by the applicant on August 17, 1988. The applicant indicated on this application that he has three children born in Bangladesh: [REDACTED] born February 2, 1985; [REDACTED] born March 3, 1986; and [REDACTED] born

April 6, 1988. The immigration officer's notes indicate that the applicant affirmed this information on June 2, 2005 during his legalization interview.

On appeal, counsel for the applicant addresses these inconsistencies by asserting that:

With regard to contradiction in the G-325A biographic information, please note once again that [REDACTED] was unaware of the errors in the form. [REDACTED] was married in 1993 and the children that were born in 1985, 1986, 1988 and 1990 are his adopted children. He was not married in 1983 but rather in 1993 . . . Please note that these errors are not his fault and the application should not be discredited because of that. His only absence came in 1987 which he stated on his application.

It should be once again noted that the unsupported assertions of counsel do not constitute evidence. *Id.* Counsel for the applicant has failed to provide any documentation to support his assertions that the applicant's children are adopted. Further, the applicant indicated on his Form G-325A that the location of his marriage was in Bangladesh. Counsel's assertion that the applicant was married in 1993 is internally inconsistent with counsel's subsequent assertion that the applicant's only absence from the United States was as stated in his application from July 1987 until September 1987.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). On appeal, counsel for the applicant has failed to address the inconsistencies in the record with independent objective evidence. Independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Examples of independent and objective evidence would be the applicant's marriage certificate and his children's birth certificates and adoption records. It would also be independent and objective evidence to show the applicant's residence in the United States during the requisite time period, such as evidence that the applicant filed federal tax returns.

The applicant has submitted in support of his application, letters from his friends and religious and cultural organizations, to corroborate his claim of continuous residence during the requisite period. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides guidelines for attestations by organizations. These guidelines state that the attestations should identify the applicant by name, be signed by an official, show inclusive dates of membership, state the address where the applicant resided during the requisite period, include the seal of the organization, establish how the author knows the applicant, and establish the origin of the information being attested to. The applicant has submitted the following letters from cultural and religious organizations: Beanibazar Social & Cultural Society (USA), Inc., stating that the applicant has been a member of the organization since 1987; [REDACTED], stating that the applicant has been a member of this association since 1987; and a "fill in the blank" letter from the [REDACTED] New York, stating that the applicant has been a member of the organization since April, 1984. However, these letters fail to satisfy the above delineated guidelines because they fail to state the address where the applicant resided during the requisite period, establish how the author knows the applicant, and establish the origin of the information being attested to. The applicant also submitted a letter from the General Secretary of the Islamic Council of [REDACTED] [REDACTED] which provides that the applicant has been personally known to the author since 1984. Although this letter provides some detailed information, it neglects to provide any specific information on the applicant during the requisite period, such as his residential address. Viewed in totality, these letters can only be given minimal weight as evidence to corroborate the applicant's residence in the United States during the requisite period.

The applicant submitted a letter from his purported former employer [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [REDACTED] provides that the applicant was a construction helper from September 15, 1981 until June 26, 1983. This letter fails to provide the applicant's address during the time period of his purported employment. The letter also fails to explain whether the author has personal knowledge of the applicant's employment. Furthermore, this letter fails to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable. Therefore, this letter fails to follow the above delineated guidelines and can only be afforded minimal weight as evidence to corroborate the applicant's residence during the requisite period.

The applicant has also submitted several written statements from his friends in support of his claim of continuous residence during the requisite period. The applicant has submitted letters from [REDACTED]

[REDACTED] and [REDACTED]. The letters from [REDACTED] and [REDACTED] fail to provide *detailed* information on their first meeting with the applicant and the extent of their contact with the applicant during the requisite period. Therefore, these letters lack sufficient detail to be given value as credible corroborating evidence. The applicant has failed to provide written statements that would satisfy his burden of providing by a *preponderance of the evidence* his residence in the United States during the requisite period.

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). The above noted inconsistencies in the applicant's record detract from the overall credibility of his claim of continuous residence during the requisite period. The applicant has failed to resolve these inconsistencies with independent and objective evidence. The corroborating documentation submitted by the applicant does not overcome the inconsistencies in the record. Therefore, within the context of the totality of the evidence, the applicant has not met his burden of proof in this proceeding.

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 contradictory statements on his applications and his 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, 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.