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JUN 04 2007

FILE:

MSC 05 190 10062

Office: CHERRY HILL, NEW JERSEY

Date:

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, Newark, New Jersey, 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 asserts that the district director failed to give weight to the fact that the applicant was unable to express himself at the time of interview. Counsel submits an affidavit from the applicant and identity documents relating to affiants attesting to the applicant's continuous residence in the United States during the requisite period.

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).

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. See 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. 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. See 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.* 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 8, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Brooklyn, New York” from April 1981 through December 1985 and at [REDACTED] Brooklyn, New York” from January 1986 to December 1992. At block #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he worked for [REDACTED] General Contractors, located at [REDACTED] Brooklyn, New York, as a construction helper, from May 1981 to December 1985 and for [REDACTED] Construction Company located at [REDACTED], Brooklyn, New York, from January 1986 to December 1992.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a fill-in-the-blank affidavit dated April 4, 2005, [REDACTED]

stating that he met the applicant in Brooklyn, New York.. However, Mr. does not provide any information regarding the basis of his acquaintance with the applicant, the inclusive dates of his acquaintance with the applicant, or the applicant's addresses throughout the requisite period.

The applicant also submitted a fill-in-the-blank affidavit dated January 23, 2005, from stating that he has known the applicant since 1982. However, Mr. does not provide specific information regarding the basis of his acquaintance with the applicant or the applicant's addresses in the United States throughout the requisite period.

Additionally, the applicant provide a fill-in-the-blank affidavit dated April 4, 2005, from stating that he met the applicant in a Bangladeshi restaurant in Brooklyn, New York. However, he does not provide any information regarding the date he met the applicant or the applicant's addresses in the United States during the requisite period.

The applicant included a fill-in-the-blank affidavit dated April 4, 2005, from who indicates that he has been in the United States since 1985, stating that he met the applicant in Brooklyn, New York, and Coney Island, New York. However, Mr. does not provide any information regarding the basis of his acquaintance with the applicant, when he first met the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant provided a fill-in-the-blank affidavit dated April 3, 2005, from who indicates that he has been in the United States since 1984, stating that he met the applicant in Brooklyn, New York. However, Mr. provides no information regarding the date he met the applicant or the applicant's addresses in the United States throughout the requisite period.

The applicant submitted a fill-in-the-blank affidavit dated April 2, 2005, from who indicates that he has been in the United States since 1985, stating that he met the applicant at Junior High School in Brooklyn, New York. However, Mr. does not provide any information regarding the basis of his acquaintance with the applicant, the date he met the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant included a fill-in-the-blank affidavit dated April 2, 2005, from who indicates that he has been in the United States since 1987, stating that he met the applicant in Brooklyn, New York, at a Bangladesh Society function. However, Mr. does not provide any information regarding the date he met the applicant or the applicant's addresses in the United States throughout the requisite period.

Additionally, the applicant submitted a fill-in-the-blank affidavit dated April 2, 2005, from stating that he met the applicant in Manhattan and in Brooklyn, New York. However, Mr. does not provide any information regarding the date he met the applicant or the applicant's addresses in the United States throughout the requisite period.

The applicant also included a fill-in-the-blank affidavit dated April 2, 2005, from [REDACTED] stating that he met the applicant in Jamaica Center, Long Island City, New York. However, Mr. [REDACTED] does not provide any information regarding the basis of his acquaintance with the applicant, the date he met the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant provided a fill-in-the-blank affidavit dated April 2, 2005, from [REDACTED] stating that he met the applicant in Brooklyn, New York, and the applicant came with him to the Bangladesh Muslim Center Mosque. However, Mr. [REDACTED] does not provide specific information regarding the basis of his acquaintance with the applicant, the date he met the applicant, or the applicant's addresses in the United States throughout the requisite period.

Additionally, the applicant provided a fill-in-the-blank affidavit dated April 2, 2005, from [REDACTED] stating that he met the applicant in Brooklyn, New York and at a Bangladeshi function in Long Island City, New York. However, Mr. [REDACTED] does not provide any information regarding the basis of his acquaintance with the applicant, the date he met the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant included a fill-in-the-blank affidavit from [REDACTED] stating that he met the applicant in Brooklyn, New York. However, Mr. [REDACTED] does not provide any information regarding the basis of his acquaintance with the applicant, the date he met the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant also provided an employment affidavit from [REDACTED] President of [REDACTED] General Contractors, located at [REDACTED] Brooklyn, New York, stating that the applicant worked for his construction firm as a construction helper from May 1, 1981 to December 31, 1985. Mr. [REDACTED] further states that he paid the applicant in cash. In a separate affidavit, Mr. [REDACTED] stated that the applicant lived with him at [REDACTED] Brooklyn, New York, from April 25, 1981 to December 1981. Mr. [REDACTED] states that the applicant paid his share of the rent and bills in cash.

The applicant included an employment letter from [REDACTED] President of [REDACTED] Company, located at [REDACTED] Brooklyn, New York, stating that the applicant worked from him from January 1986 to December 1992 as a construction helper and was paid in cash. In a separate affidavit, Mr. [REDACTED] stated that the applicant lived with him at [REDACTED] Brooklyn, New York, from January 1986 to December 1992 and paid his share of rent and bills in cash.

On February 9, 2006, the applicant was requested to submit additional evidence to establish his continuous residence in the United States during the requisite period. The applicant, in response, provided an affidavit from [REDACTED] attesting that the applicant has been in the United States since 1981. Mr. [REDACTED] states that he met the applicant in Brooklyn and that they worked together as construction workers. However, Mr. [REDACTED] does not provide any information regarding the inclusive

dates of his acquaintance with the applicant or the applicant's addresses in the United States throughout the requisite period.

The applicant also provided an affidavit from [REDACTED] stating that he provided the applicant with temporary housing when the applicant entered the United States in 1981 and supported the applicant with money until the applicant found work as a construction helper. However, Mr. [REDACTED] does not provide his address at the time he met the applicant, the basis of his acquaintance with the applicant, or the applicant's addresses in the United States throughout the requisite periods. Furthermore, Mr. [REDACTED] statement that he provided the applicant with temporary accommodation when the applicant first arrived in the United States in 1981 contradicts the applicant's statement that he arrived in the United States in April 25, 1981, and lived with [REDACTED] his first employer, at [REDACTED] Brooklyn, New York" from that date through December 1985. Mr. [REDACTED] statement also contradicts Mr. [REDACTED] statement that the applicant lived with him from April 25, 1981, the day the applicant claims he arrived in the United States, through December 1985. The applicant has not provided any explanation for this discrepancy in his claimed dates and addresses of residence in the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Additionally, the applicant submitted an affidavit from [REDACTED] stating that he met the applicant in a grocery store "immediate[ly] after his arrival". However, Mr. [REDACTED] does not provide any information regarding the applicant's addresses in the United States throughout the requisite period.

On appeal, counsel submits an affidavit from the applicant stating that he could not collect some affidavits attesting to his residence in the United States during the requisite period because certain individuals were not in the United States when he was attempting to gather evidence to establish his continuous residence in the United States during the requisite period. The applicant submits photocopies of photo identity documents relating to [REDACTED] and [REDACTED]

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. Although he has provided numerous affidavits from acquaintances attesting to his residence in the United States during the requisite period, these affidavits lack sufficient detail, contain little verifiable information, and most importantly, all lack testimony regarding the applicant's continuous residence in the United States for the entire period from prior to January 1, 1982 through the date that he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, these affidavits are accorded little evidentiary weight.

As previously noted, there is a discrepancy between the applicant and Mr. [REDACTED] statements that the applicant resided with Mr. [REDACTED] from the day he entered the United States, April 25, 1981, through December 1985 and the statement from Mr. [REDACTED] that he provided the applicant temporary housing when the applicant first arrived in the United States. This contradiction raises questions of credibility regarding the testimony of Mr. [REDACTED] and Mr. [REDACTED].

The absence of sufficiently detailed supporting documentation that provides testimony 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. 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)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 from prior to January 1, 1982 as required under section 245A(a)(2) of 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.