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U.S. Citizenship  
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Services

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41

[REDACTED]

FILE:

[REDACTED]

Office: HARTFORD

Date:

**MAY 15 2007**

MSC 05 225 10578

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. 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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The district director determined that 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district 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 denied the application.

On appeal, counsel reiterates the applicant's claim that he traveled to the United States by boat from the Bahamas and entered the United States without inspection in March 1981. Counsel asserts that the applicant has submitted detailed, credible, and consistent affidavits from friends, former roommates, and former employers to establish his continuous residence in the United States during the requisite period.

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. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) 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. *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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits 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.

Evidence to establish proof of continuous residence in the United States during the requisite periods may include letters from employers. Such letters should be on letterhead stationery, if the employer has such stationery, and must include the alien's address at the time of employment; exact periods of employment; periods of layoff; if any, duties with the company; and, a statement as to whether CIS may have access to employment records. *See* 8 C.F.R. § 245a.2(d)(3)(i). In this case, both employers include the applicant's job title, but neither employer provided a description of the applicant's duties, periods of layoff, or the applicant's or the addresses where the applicant resided during the period of employment for the employers.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 May 13, 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] New York, New York” from March 1981 to December 1989 and at [REDACTED] Atlanta, Georgia,” from December 1989 to February 1990. At block #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked for [REDACTED] in Queens, New York, as a store assistant from April 1981 to November 1987 and for [REDACTED] Restaurant in New York, New York, as a cook’s helper from December 1987 to December 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted photocopies of United States Postal Service (USPS) money order receipts dated: July 6, 1981; July 12, 1982; March 14, 1983; July 29, 1983; July 16, 1984; April 22, 1985; May 13, 1985; and, July 14, 1986.

The applicant submitted an affidavit dated March 24, 1990, from [REDACTED] stating that the applicant lived with him at [REDACTED] New York, New York,” from March 1981 to December 1989. However, [REDACTED] did not state the basis of his acquaintance with the applicant.

The applicant also submitted an affidavit dated March 22, 2005, from [REDACTED] stating that he shared the apartment located at [REDACTED] New York, New York,” with the applicant and “six or seven other Bangladeshi men” from November or December 1987 until about May 1988.

The applicant submitted a letter dated March 2, 1990, from [REDACTED] Manager of [REDACTED], located at [REDACTED] Woodside, Queens, New York 11377, stating that the applicant worked for his store from April 1981 to November 1987 as a store keeper and was paid in cash because he had no social security card.

Additionally, the applicant submitted an employment letter dated April 6, 1990, from [REDACTED] stating that the applicant worked for [REDACTED] Indian Restaurant, located at [REDACTED] New York, NY 10003” from December 1987 to December 1989 as a cook and was paid in cash because he had no social security card.

Additionally, the applicant also included an affidavit dated January 13, 2001, from [REDACTED] of Stamford, Connecticut, stating that that the applicant lived at [REDACTED] New York, New York,” from 1981 to 1987 and that the applicant “very often” came to visit “our pizza place” located at [REDACTED] Stamford, Connecticut.” [REDACTED] Shahjahan further stated that the applicant moved to [REDACTED] Stamford, Connecticut” in 1989. [REDACTED]’s statement that the applicant lived at the New York, New York address from 1981 to 1987 contradicts the applicant’s statement on the Form I-687 that he lived at that

address from March 1981 to December 1989. It also contradicts the statement that the applicant lived at that address from March 1981 to December 1989.

Furthermore, [REDACTED] stated in his affidavit that the applicant moved to Stamford, Connecticut, in 1989. This statement contradicts the applicant's statement on the Form I-687 that he lived at [REDACTED] Atlanta, Georgia" from December 1989 to February 1990 and at [REDACTED] Atlanta, Georgia" from February 1990 to June 1990.

The applicant provided an affidavit dated March 1, 1990, from [REDACTED] stating that the applicant had lived with him at [REDACTED], Atlanta, Georgia," since March 1990. This statement contradicts the applicant's statement on the Form I-687 that he lived at [REDACTED] Atlanta, Georgia" from December 1989 to February 1990 and at [REDACTED] Atlanta, Georgia" from February 1990 to June 1990.

The applicant has not provided any explanation for these discrepancies. Although some of these contradictory statements regarding the applicant's places and dates of residence in the United States relate to the period after May 4, 1988, these contradictions raise questions of credibility regarding the applicant's overall claim of continuous residence in the United States since October 1981.

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).

On appeal, counsel reiterates the applicant's claim of entry into the United States prior to January 1, 1982, and continuous residence in the United States from that date through May 4, 1988. Counsel contends that the applicant is not in touch with any of the individuals who assisted him to enter the United States without inspection in 1981 and "cannot provide any evidence about his entry other than his own testimony." Counsel asserts, "[i]t is unfair to require [REDACTED] to provide evidence that simply does not exist."

In order to establish eligibility for temporary resident status, the applicant must establish by a preponderance of the evidence that he entered the United States prior to January 1, 1982, and resided continuously in this country from that date to May 4, 1988. In this case, although the USPS receipts reflect the applicant's presence in the United States from July 1982 through July 1986, they are not sufficient to establish the applicant's continuous residence in the United States throughout the requisite period. The affidavits submitted in support of the applicant's claim lack sufficient verifiable information and contain discrepancies that raise questions regarding the credibility of the applicant's claim.

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.