



U.S. Citizenship
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FILE: [Redacted]
MSC-05-320-12967

Office: NEW YORK

Date: NOV 14 2007

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:



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 R. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, New York District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the applicant failed to establish his continuous unlawful residence in the United States during the requisite period.

On appeal, the applicant's representative stated that the evidence presented was sufficient to warrant a favorable exercise of discretion, and the director's decision was arbitrary and not supported by the facts and circumstances in the case.

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).

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 applicant 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 applicant 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 and 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 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 Citizenship and Immigration Services (CIS) on August 16, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses in the United States during the requisite period: [REDACTED] from 1981 to 1988; and 21-47 [REDACTED] from 1988 to 1993. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "None." At part #32 where applicants were asked to list all absences from the United States since entry, during the requisite period the applicant listed only a trip to Canada to visit family from July to August of 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only a position as kitchen assistant for Maharaja Restaurant starting in March 1982. The applicant failed to provide an ending date for this position.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted multiple supporting documents. He provided a declaration from Julkifl Choudhury of the Islamic Council of America Inc. [REDACTED] dated December 30, 2005. In this declaration, the declarant provided the applicant's date of birth and current address. The declarant stated that he has known the applicant since 1984 and that while the declarant was Imam of [REDACTED] from 1982-1986, he saw the applicant attending the Friday prayer and other Islamic holidays. This declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the information provided in the declaration is inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant failed to list his affiliation with the Islamic Council of America Inc. [REDACTED] at part #31 where applicants were asked to list all affiliations or associations. Lastly, this declaration does not conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the declaration is not signed by an official whose title is shown, it does not show the applicant's inclusive dates of membership, and it does not state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant provided a declaration from [REDACTED] president of [REDACTED] Center, dated August 16, 2004. In this declaration [REDACTED] stated that the applicant is a regular attendee of the Astoria Islamic Center mosque and has been coming to Friday prayer since 1988. This declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the information provided in the declaration is inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant failed to list his affiliation with Astoria Islamic Center mosque at part #31 where applicants were asked to list all affiliations or associations. Lastly, this declaration does not conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, or the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The record also contains another declaration from [REDACTED] President of Astoria Islamic Center Inc., dated July 14, 2004. In this declaration [REDACTED] stated that the applicant used to attend the center for the purposes of prayer since 1987. This information is inconsistent with the other letter provided by [REDACTED] which indicates the applicant has been attending since 1988. This declaration also fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the information provided in the declaration is inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant failed to list his affiliation with Astoria Islamic Center mosque at part #31 where applicants were asked to list all affiliations or associations. Lastly, this declaration does not conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted a declaration from [REDACTED] dated November 23, 2005. In this declaration, [REDACTED] stated that the applicant was one of her friends when he was living in the Bronx. She has known him since 1985. This letter does not specifically confirm the applicant's residence in the United States, other than in 1985. In addition, [REDACTED] failed to provide the applicant's address during the requisite period, or indicate the frequency of her contact with the applicant. As a result, the declaration is found to lack sufficient detail.

The applicant provided a declaration from [REDACTED] dated November 30, 2005. The declarant stated that he has known the applicant since 1982 when the declarant was working in mid-Manhattan. He also stated he knew the applicant through various Indian community gatherings. This letter does not specifically confirm the applicant's residence in the United States, or indicate the frequency of his contact with the applicant. In addition, the declarant failed to provide the applicant's address during the requisite period. As a result, the declaration is found to lack sufficient detail.

The applicant provided a declaration from [REDACTED] dated November 16, 1989. The declarant stated that the applicant worked at [REDACTED], Inc. as a carpet installer from November 17, 1986 to May 12, 1998. This letter does not confirm the applicant's residence prior to November 17, 1986. In addition, it is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant failed to list employment with

██████████ when he was asked to list all employment in the United States. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period. Lastly, this letter does not conform to regulatory standards for letters from employers. Specifically, the declaration does not include the applicant's address at the time of employment, whether the information was taken from employee records, the location of the records, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided a declaration from ██████████ dated November 2, 1988. ██████████ stated that the applicant was his roommate since December 1981. ██████████ identified his own address as ██████████. ██████████ stated that the rent receipts and household utility bills were in his name, and the applicant contributed towards their payment. However, ██████████ failed to provide copies of any rent receipts or utility bills that might corroborate his claim. ██████████ also failed to provide his contact telephone number.

The applicant submitted a declaration from ██████████ dated November 24, 1988. Mr. ██████████ stated that the applicant visited him from July 25, 1987 to August 15, 1987 when considering relocating from New York to Toronto. This letter merely indicates the applicant resided in the United States during the time immediately surrounding the period July 25, 1987 to August 15, 1987. In addition, ██████████ failed to provide address information for the applicant in the United States, the origin of their acquaintance or frequency of their contact. As a result, this declaration is found to lack sufficient detail.

In response to a Notice of Intent to Deny (NOID) issued on June 13, 2006, the applicant provided a letter from ██████████ stated that, according to his office's records, the applicant "has been attending this office since January 1988." ██████████ failed to provide the applicant's address during the requisite period. In addition, although ██████████ indicated he referred to the applicant's records when preparing the letter, he failed to provide copies of the applicant's records. Considering that ██████████ failed to provide supporting documentation, this letter is found to lack sufficient detail.

The applicant also provided a letter from ██████████ dated April 10, 2006. ██████████ stated that she knows the applicant "residing [at] ██████████ . . . since 1986. . . . He used to do part time jobs in Broadway Street in mid Manhattan Area." The address provided for the applicant is inconsistent with the address listed on Form I-687 as the applicant's address in 1986. It is noted that the applicant indicated on Form I-687 that he resided at 2105 33rd St. in 2006. Therefore, this letter is found to confirm the applicant's address at the time the letter was prepared, in 2006. As a result, the letter is found not to specifically confirm the applicant resided in the United States during the requisite period.

The record contains another declaration from ██████████ of the Islamic Council of America Inc. ██████████ dated July 28, 2004. This declaration is identical to the other declaration provided by ██████████ except that it does not include the applicant's date of birth. Again, this declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the information provided in the declaration is inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant failed to list his affiliation with the Islamic

Council of America Inc. [REDACTED] at part #31 where applicants were asked to list all affiliations or associations. Lastly, this declaration does not conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the declaration is not signed by an official whose title is shown, it does not show the applicant's inclusive dates of membership, and it does not state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

The record indicates the applicant was interviewed by an immigration officer on August 5, 2004 in connection with his Form I-485 Application to Register Permanent Resident or Adjust Status. During the interview the applicant indicated he entered the United States for the first time in November 1981 illegally via the Canadian border at Buffalo, New York. The applicant stated that he departed the United States only once during the requisite period, on a trip to Canada in July 1987. The applicant stated that he was married in India in February 1981. He stated that he has one adopted child who was born in India in 1987.

The record contains the applicant's Form I-485 LIFE Act application. At part 3B where applicants were asked to list all sons and daughters, the applicant listed a child [REDACTED] born February 22, 1986. This information appears to be inconsistent with the information provided in the Form I-485 interview where the applicant indicated his child was born in 1987. The record also contains a Form G-325A Biographic information dated July 3, 2002 and submitted by the applicant in connection with his Form I-485 application. The applicant listed his wife's name on the form, but failed to list his date and place of marriage.

In denying the application, the director determined that the applicant failed to establish continuous residence in the United States. The director stated that the applicant claimed he entered the United States from the Canadian border yet produced no evidence of this entry. It is noted that, since the applicant stated he entered the United States illegally, it is reasonable that he would not have physical documentation of this entry. The director stated that four affidavits submitted by the applicant are not accompanied by documentation of the affiants' identity or residence in the United States during the requisite period. It is noted that documentation of an affiant's identity or residence in the United States are not required, yet the record indicates the four affidavits listed by the director were not accompanied by such documentation. The director also stated that the applicant's only absence from the United States during the requisite period was during 1987, yet he was married in India during the requisite period and one of his children was born in India on February 22, 1986. It is noted that the record of the applicant's interview indicates the applicant stated that he was married in India on a date prior to his first entry into the United States, and that his child is adopted. There is no record of the director having specifically requested birth or adoption documentation for the applicant's children. The director also mentioned that the applicant did not submit income tax documentation.

On appeal, the applicant's representative stated that the evidence presented was sufficient to warrant a favorable exercise of discretion, and the director's decision was arbitrary and not supported by the facts and circumstances in the case. The representative stated that the applicant entered without inspection, so his entry is, by its nature, undocumentable. The representative also stated that the affidavits provided by the applicant did contain identity documents. It is noted that some of the declarations provided by the applicant were accompanied by identity documentation, and some included no supporting documentation. The representative also pointed out that the applicant had stated that he was married in

February 1981 and his daughter, who was born in February 1986, was adopted. Lastly, the representative explained that the applicant could not have filed income tax returns because he did not have a Social Security number.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. He has submitted declarations and letters that fail to confirm the applicant resided in the United States during the requisite period, are inconsistent with the information provided on Form I-687, lack sufficient detail, and do not conform to regulatory standards. Specifically, the declarations from the Islamic Council of America Inc. and Astoria Islamic Center fail to confirm the applicant resided in the United States during the requisite period, are inconsistent with the information provided on Form I-687, and do not conform to regulatory standards. The declaration from [REDACTED] does not specifically confirm the applicant's residence in the United States other than in 1985, and lacks sufficient detail. The declaration from Mr. [REDACTED] does not specifically confirm the applicant's residence in the United States and lacks sufficient detail. The declaration from [REDACTED] does not confirm the applicant's residence prior to November 17, 1986, is inconsistent with the information provided on Form I-687, and does not conform to regulatory standards. The letter from [REDACTED] merely confirms the applicant's residence during the period immediately surrounding July to August of 1987 and lacks sufficient detail. The letter from [REDACTED] lacks sufficient detail. The letter from Ms. [REDACTED] does not specifically confirm the applicant resided in the United States during the requisite period. [REDACTED]'s declaration is insufficient to meet the applicant's burden of establishing that he resided in the United States throughout the requisite period. In his declaration, [REDACTED] failed to provide a contact number or copies of utility bills. Considering the inconsistencies and lack of detail found in the applicant's other evidence, [REDACTED] declaration is insufficient to meet the applicant's burden of establishing that he resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent supporting documentation 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. Given the contradictory statements contained in the applicant's I-687 application and supporting declarations, and 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 through the date he attempted to file a Form I-687 application 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.