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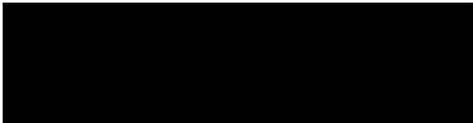
Office: NEW YORK

Date: APR 01 2008

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 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 applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director explained why the applicant's supporting documentation was deficient and discussed the conflicting testimony provided by the applicant in connection with other applications. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. The director also found the applicant statutorily ineligible due to his inadmissibility pursuant to section 212(a)(7)(B)(i)(II) of the Act.

On appeal, counsel for the applicant challenges the propriety of the director's findings and goes on to further explain certain supporting documentation.

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). The applicant must also 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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, 431 (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 during the requisite time period. Here, the applicant has not met his burden. In support of the Form I-687, the applicant submitted a single document in the form of an employment verification letter.¹ However, the director found this document lacking in credibility and therefore issued a notice of intent to deny (NOID) dated September 1, 2005. The director explained that the employment verification letter, which was dated November 19, 2004, was written on the letterhead of an employer who had not been in business since 1987. The director also notified the applicant of a number of considerable inconsistencies between the information provided by the applicant on his asylum application (and related documents) and the information provided in his Form I-687.

In response, the applicant provided his own notarized statement dated September 26, 2005 in which he discussed the sequence of events that he claimed led him to file an asylum application and the present Form I-687. More specifically, the applicant claimed that his first attempt to file the Form I-687 was rejected causing the applicant to leave the United States in 1988. The applicant claimed that he returned to the United States in 1991 because he felt persecuted and mistreated by the authorities in India, where he had been residing from 1988-1991. The applicant further stated that when he reentered the United States in 1995, he was only questioned about his last entry, which he admits took place in July 1991. With regard to inconsistencies on his asylum application, the applicant claimed that the person who assisted him in filling out the Form I-589 urged him to say that he resided in India for the full five years prior to filing the application in order to avoid any confusion in connection with his prior Form I-687 application.

¹ Although the director referred to this document as an affidavit, the document is not notarized, nor did the document's signer swear that the information he provided is true under penalty of perjury. The director's error is immaterial to the basis for denial and is only noted for the record.

After careful consideration of this explanation, the AAO finds that it is deficient for a number of reasons. First, the applicant signed the asylum application under penalty of perjury, thereby swearing to the truth of the information provided therein. In doing so, the applicant has placed in himself in a position where any subsequent statements he made may be perceived as lacking in credibility if those subsequent statements are inconsistent with those made previously. Second, it is unclear why the applicant thought there would be any confusion regarding the rejected Form I-687 if, as the applicant claimed, the application was not accepted for filing and, therefore, was not part of the applicant's record. Further, the AAO notes that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the applicant's mere claim that certain information he provided on a previously filed application is inaccurate is insufficient without proper evidence establishing the facts in question. The fact that the applicant admits to having knowingly provided false and misleading information in order to obtain an immigration benefit only lessens the applicant's credibility.

That being said, the applicant maintained the validity of the [REDACTED] employment verification letter signed by [REDACTED] despite the derogatory information cited by the director in the NOID. Although the applicant claimed that he would continue to locate Mr. [REDACTED] for further verification, he did not expressly address or even acknowledge the fact that the validity of the employment verification provided on the applicant's behalf was significantly compromised.

Lastly, the applicant's response included three form affidavits from individuals who claimed to have maintained relationships with the applicant since 1984, 1985, and 1986, respectively. Thus, even if the AAO assumed that the information provided by all three affiants was true, none of the affiants claimed to have known the applicant since January 1, 1982. Additionally, the affidavits are severely lacking in content, as the only relevant information provided by the affiants is the nature and commencement date of their respective relationships with the applicant. All three affidavits lack any details that would lend credibility to the alleged 19 to 21-year relationships with the applicant. Furthermore, the affiant named [REDACTED] claimed to have had a relationship with the applicant since 1986 even though he stated that he was the applicant's cousin. The affiant did not provide further information to explain his questionable statement. Accordingly, based on the deficiencies in all three affidavits, the statements can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

On August 7, 2006, the director issued a decision denying the applicant's Form I-687. With regard to the above affidavits, the director determined that they were deficient and that their overall credibility had been compromised based on the inconsistent information provided by the applicant. The director also found the applicant inadmissible pursuant to section 212(a)(7)(B)(i)(II) of the Act, which states that any nonimmigrant who is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

On appeal, counsel maintains that the applicant submitted detailed credible evidence to establish continuous residence in the United States during the statutory period. Counsel seemingly ignores the plethora of inconsistencies in the information the applicant submitted in a variety of his applications and fails to specifically address the considerable deficiency in the [REDACTED] employment verification letter. Thus, counsel attempts to restore the applicant's credibility by merely challenging the director's findings and reviewing the documentation submitted by the applicant. However, 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). The director provided an adequate explanation for his findings in the denial notice. Counsel's choosing to ignore those findings and instead to restate the applicant's claim is not sufficient to overcome the adverse information on record.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient attestations in an attempt to lend credibility to his claim despite having previously provided information that suggests the applicant's claim is not valid. Although the applicant now retracts the statements previously provided in documentation related to his earlier asylum claim, the record lacks the necessary competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Further, the absence of sufficiently detailed 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 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 as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Lastly, Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In the present matter, the applicant has admitted that he provided false information in an asylum application. By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation. Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

ORDER: The appeal is dismissed with a finding of inadmissibility. This decision constitutes a final notice of ineligibility.