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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 06 007 13249

Office: PHILADELPHIA

Date:

AUG 28 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Philadelphia. The decision 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. 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.

On appeal, the applicant asserts that Citizenship and Immigration Services (CIS) did not give appropriate weight to the applicant's evidence, and that the applicant has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must 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 physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and 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).

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.* at 80. 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 for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

Employment

- [REDACTED] Vice President of Atlas Forwarding Co., Inc. (Atlas) submitted an unsworn statement on company letterhead stating that the applicant was employed by Atlas from March of 1984 until December 10, 1985, packing and loading shipments to be delivered to port. [REDACTED] stated that the applicant resided at [REDACTED] during his employment, and that the information provided was taken from company records which are available for inspection.

The director noted in her decision denying the Form I-687 application, that a CIS search of business records in the United States indicated that Atlas “made its first appearance in 1997.” The applicant did not address the director’s finding in this regard on appeal. It is further noted that the applicant provided no evidence in rebuttal to the director’s finding, such as

corroborating documentation (i.e., pay stubs) to support his period of claimed employment with this company.

- [REDACTED], assistant manager of Jewel Tree, Inc. (Jewel Tree), submitted an unsworn statement wherein he stated that the applicant was employed by Jewel Tree as a full-time stock person earning \$200 per week from January of 1986 until February of 1988. Ms. [REDACTED] listed the applicant's residence during that period of employment as [REDACTED]. [REDACTED] stated that the information herein reported was taken from company records.
- [REDACTED], Associate Designer, submitted an unsworn statement dated April 20, 1990 from Eurotex Knitting Mills, Inc. (Eurotex) wherein he stated that the applicant is a staff member of Eurotex, and that he "has been on the pay role [sic] of our company since February[,] 1988." [REDACTED] further stated that the applicant earned \$7.85 per hour.
- [REDACTED], manager of India Shoes, submitted an unsworn statement wherein he stated that the applicant was employed by his store from December of 1981 until February of 1984. [REDACTED] stated that the applicant performed his duties efficiently, but provided no additional information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The employment statement from India Shoes is of little evidentiary value as it does not provide information required by the above cited regulation. The remaining employment information provided by the applicant is also deemed to be of little evidentiary value and entitled to little weight. The director noted in her decision denying the Form I-687 that a CIS search of business records did not indicate that Atlas Forwarding Co. existed during the period of employment claimed by the applicant. The letter from Eurotex does not state the applicant's duties and declare that the information was taken from company records and, if so, the location and availability for inspection of such records.¹ Further, the director noted in her decision that the applicant's employment records, obtained after he jumped ship and entered the United States in 1999, indicate that the applicant was employed in Pakistan on board vessels from 1981 through 1998. The applicant did not address or otherwise challenge these adverse findings on appeal. The applicant produced no corroborating evidence of employment with these employers, even though the director directly challenged the validity of the employment. The employment records submitted by the applicant are deemed neither

¹ Although not mentioned by the director in her decision, public records indicate that Eurotex made its first appearance as a business in 2002.

credible nor of any probative value, and they do not establish the applicant's claimed residence in the United States during the requisite period.

Attestation

The applicant submitted an attestation from [REDACTED] on the letterhead of the "United American Muslim Association Of New York." [REDACTED] states that the applicant has been a regular member of his association from November of 1981 until the date of the attestation (April 30, 1990).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
 - (A) Identifies applicant by name;
 - (B) Is signed by an official (whose title is shown);
 - (C) Shows inclusive dates of membership;
 - (D) States the address where applicant resided during membership period;
 - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
 - (F) Establishes how the author knows the applicant; and
 - (G) Establishes the origin of the information being attested to.

The attestation/unsworn statement presented in this instance is of little evidentiary value as it was not signed by an official of the association whose title is shown. Further, the document does not list the applicant's address during his period of membership, nor does it establish how [REDACTED] knows the applicant, or state the origin of the information being attested to. The document is of little probative value and does not establish that the applicant resided in the United States for the duration of the requisite period.

Other Evidence

- The applicant submitted a handwritten grocery receipt bearing his name and dated August 5, 1987.

- The applicant submitted two lease agreements listing him as the lease tenant for the property at [REDACTED]. One is for the period of time 1/1/82 – 12/31/83, and the other is from 6/15/86 – 5/31/88. Although both leases are for the same address, they list different landlords and this discrepancy is not explained. The applicant provides no additional evidence in support of the lease agreements, such as statements from the landlord, rent receipts, etc.

The applicant submitted a copy of a remittance form from [REDACTED] indicating that the applicant performed a business transaction with that bank on September 19, 1985.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. As previously stated, 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 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 during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.