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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEW YORK

Date: DEC 17 2008

MSC-05-231-13584

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, your file has 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 if your case was remanded for further action, you will be contacted.

John F. Grissom, Acting 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 Director, New York. 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in an unlawful status during the requisite period. Specifically, the director did not find the affidavits submitted by the applicant credible. The director also noted in the Notice of Intent to Deny (NOID) that, when interviewed, the applicant's testimony as to where he lived between 1981 and 1988 was inconsistent with his I-687 Application and its supporting documents. The director also indicated in the NOID that F.I. Construction Company, which employed the applicant from 1982 to 1989, was not in business until 1996.

On appeal, the applicant submits a signed statement in which he states that it is very difficult for him to find additional evidence since some people he knows have left the United States and some employers for whom he worked in the past have closed their businesses, but the evidence that he has submitted – affidavits from [REDACTED] his Form I-95A (Crewman's Landing Permit), and his 1989 passport – is sufficient to support his claim that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful during the requisite period. The applicant further states on appeal that he will face a lot of hardships if he has to go back to his country of origin.

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 245A(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).

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 applicant 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 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 here is whether the applicant has furnished sufficient credible evidence to meet his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the duration of the requisite period.

The record contains the following: 15 affidavits from the applicant's friends, mother, and former employers; a personal declaration dated March 24, 2006; a photocopy of the applicant's passport issued by Bangladesh Consulate General on August 8, 1989 and extended until August 7, 2009 in New York City, NY; and Form I-95A, Crewman's Landing Permit, bearing the applicant's name and showing that the applicant was admitted as a "D-1" crew member in Cleveland, OH, on November 12, 1981.

A review of the record reveals that of the 15 affidavits that the applicant submitted, seven were executed by [REDACTED]. In all seven affidavits, [REDACTED] claims to have known the applicant since November 1981, and further states that he has personal knowledge of the applicant's continuous presence in the United States since then. [REDACTED] however, gave no specific detail as to how he comes to this knowledge. He stated in only one affidavit dated March 23, 2006, that he met the applicant at a restaurant. There is no specific information as to the name of the restaurant or when and under what circumstances he first met the applicant. He also indicated in only one affidavit dated January 2, 1991, that he and the applicant lived together as room-partners and shared rent payments as well as electricity and gas bills from November 14, 1981 to November 8, 1986. The affiant provides no other details about their shared residence, and his claim is not corroborated by other contemporaneous evidence such as proof of rent payments or utility bills that [REDACTED] or the applicant paid during that time. [REDACTED] also did not include a copy of his government-issued identity card or some other evidence establishing his residence in the United States during the time he stayed with the applicant, specifically between 1981 and 1986. Although submission of affidavits alone is not a ground for denial, the sufficiency of all affidavits produced by the applicant will be judged according to their probative value and credibility. 8 C.F.R. § 245a.2(d)(6). In this case, the lack of detail in [REDACTED] affidavits coupled with the absence of contemporaneous documents seriously undermines the credibility of [REDACTED] claim that he has known the applicant since 1981 and has resided together with the applicant between 1981 and 1986.

On appeal, the applicant asserts that [REDACTED] and his affidavits are credible as evidence of his claim that he has continuously resided in the United States in an unlawful status since 1981. In two of his affidavits, [REDACTED] states under oath that he has been residing in the United States since 1979 as a U.S. legal permanent resident and provides his social security number, alien registration number, and telephone number. Examination of [REDACTED]'s alien registration number by this office, however, reveals that the alien registration number he provided, [REDACTED], is not his, casting doubt on the credibility of his assertions.

Affidavits from [REDACTED] all state that the affiants have known the applicant since 1981, but the affiants provide no detailed explanation as to how they have known the applicant since 1981. A brief assertion such as [REDACTED] (the applicant) is known to me since 1981" is not persuasive as proof of the applicant's claim of continuous unlawful residence in the United States since 1981

\_\_\_\_\_ owner of [REDACTED], and [REDACTED] in their affidavits all claim to have employed the applicant during the requisite period. Their employment-affidavits are deemed relevant but fail to include some critical information as prescribed by 8 C.F.R. § 245a.2(d)(3)(i). For example, these affidavits do not state the applicant's address at the time of employment and do not indicate whether the information was taken from official company records and whether the Service may have access to the records. Furthermore, [REDACTED] did not include in his affidavit the applicant's duties with the company. Because of the lack of detail required by the cited regulation, the affidavits will be given little weight.

The director in denying the application stated that [REDACTED] was not in business until 1996, suggesting that it is impossible for the company to employ the applicant from January 1982 to December 1989. seven [REDACTED]s before the company had a permit to do business. The AAO finds it possible that [REDACTED] employed the applicant without a permit during that time. Nevertheless, a review of the record reveals that the applicant submitted two identical affidavits from [REDACTED], one submitted along with his Form I-687 and the other submitted in 1991 when he registered as a CSS class member. In the 1991 affidavit, [REDACTED], owner of [REDACTED], stated that he employed the applicant from January 1984 to December 1986; whereas, in the other affidavit that the applicant submitted along with his Form I-687, [REDACTED] Islam stated that he employed the applicant between January 1982 and December 1989. The difference in the time period of employment between these two identical affidavits is material. It seriously undermines the credibility of [REDACTED] and his claim that he employed the applicant during the statutory period as well as the credibility of the applicant's claim that he has continuously resided in the United States since 1981. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. On appeal, the applicant has not submitted any independent objective evidence to resolve this inconsistency.

The affidavit from the applicant's mother is deemed relevant and credible as evidence of the applicant's claim that he went to Bangladesh for one month but not as evidence of his claim that he has continuously resided in the United States in an unlawful status for the duration of the requisite period. [REDACTED] wrote and executed her affidavit in Bangladesh in 1991. She stated in her affidavit that her son, the applicant, has been residing in the United States for a long time and the only time he returned home was in 1987 for one month. Her claim that the applicant left the United States for one month in 1987 is consistent with the applicant's personal declaration and testimony, and is accepted. However, her reference to her son being in the United States for a long time is not persuasive as evidence of the applicant's claim that he has resided in the United States continuously in an unlawful status since 1981.

As stated above, the burden is met when, based on relevant, probative, and credible evidence, the applicant's claim is probably true. In this case, the applicant's passport issued in New York in 1989 and extended until 2009 is relevant, probative, and credible as evidence of his continuous residence in the United States from 1989, but is insufficient to establish eligibility for the benefit sought. Furthermore, while the Form I-95A, Crewman's Landing Permit, is accepted as evidence of the applicant's presence in the United States on November 12, 1981, it cannot be accepted as evidence of his continuous residence in the United States since such a date, especially when the applicant's testimony about his residence in the United States during the requisite period is inconsistent with his Form I-687. The record shows that during his interview with a U.S. Citizenship and Immigration Services (USCIS) officer on March 6, 2006, the applicant testified that he resided at [REDACTED] for less than a month before living at [REDACTED] for a little more than a year. The applicant in

his Form I-687, however, listed from November 1981 to November 1986 and from December 1986 to December 1988.

The inconsistencies in his testimony regarding his addresses in the United States and the lack of detail in the supporting affidavits detract from the credibility of the applicant's testimony that he resided in the United States throughout the requisite period. As stated above, unless the applicant can submit competent objective evidence pointing to where the truth lies, any attempt to explain or reconcile such inconsistencies will not suffice. In this case, the record reflects that the applicant has not submitted any independent or objective evidence to reconcile or explain such inconsistencies. The record also indicates that the applicant has failed to explain or reconcile the inconsistencies regarding where he lived between 1981 and 1988.

Finally, while it may be true that the applicant will face a lot of hardships should he return to his country of origin, this assertion is irrelevant to his eligibility from the benefit and therefore will not be considered.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and lack of specificities noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.