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FILE: [Redacted] Office: NEW YORK Date: JUL 01 2008
MSC 05 223 11043

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. 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.

Robert P. Wienmann, 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. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status. On appeal, counsel asserted that the applicant was not interviewed and signed a statement without knowledge of its contents.

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 (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)(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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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, *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 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 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 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.

In a sworn affidavit dated January 2, 1990, the applicant stated that he first entered the United States on October 3, 1981. The Form I-687 application required the applicant to list all of his employment in the United States since his entry. The applicant stated that he worked at the Penington (sic) Hotel in New York City from January 1982 to March 1992 as a porter/doorman/desk clerk. The applicant also stated that he lived at [REDACTED] Bronx, New York, from October 1981 to October 1982, and at [REDACTED], which is in Astoria, New York, from November 1982 to October 1989.

The evidence in the record is described below.

- The record contains a notarized letter dated May 1, 2004 from the Curry and Tandoor Restaurant, in New York City, signed by [REDACTED]. Mr. [REDACTED]'s position at that restaurant, if any, is not stated in the letter. That letter states that the applicant worked in that restaurant as a part-time kitchen helper from December 1981 through October 1989.

The requirements for employment verification letters at 8 C.F.R. § 245a.2(d)(3)(i) are listed above. The letter from [REDACTED] does not comply with all, nor any, of those requirements.

Because it is a relevant document, the employment verification letter provided will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). It will be accorded less weight, however, than if it conformed to the requirements of 8 C.F.R. § 245a.2(d)(3)(i).

Further, on the Form I-687 application, which the applicant signed on April 21, 2005, the applicant was required to list all of his employment in the United States since his first entry. The applicant did not list any employment at the Curry and Tandoor restaurant on that application. This casts additional doubt on the veracity of this employment claim. This employment verification letter will be accorded no evidentiary value.

Further still, 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. The applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). This additional employment claim, not mentioned on the Form I-687 application, casts doubt on the balance of the evidence in the record.

- The record contains a notarized letter, dated May 11, 2004, from [REDACTED] of Ozone Park, New York, an acquaintance of the applicant. That letter states that [REDACTED] has known the applicant since his arrival in the United States during December 1981. This office notes that the applicant stated, in his sworn affidavit of January 2, 1990, that he arrived in the United States on October 3, 1981, rather than during December. Because of this contradiction the letter of [REDACTED] would be accorded little credibility. The additional doubt cast on the letter by the anomalies in the May 1, 2004 letter of [REDACTED] reduces the credibility such that it will be accorded no evidentiary value.

The record contains an affidavit from [REDACTED] that is dated May 13, 2004. In that affidavit [REDACTED] stated that the applicant has been in the United States since December 1981. Mr. [REDACTED] stated that the applicant worked as a construction laborer "and also as a part-time kitchen helper in my previous restaurant at [REDACTED], New York, NY 10003 during the period of 1981 thru 1989."

This office notes that [REDACTED]'s May 1, 2004 letter, on the letterhead of the Curry and Tandoor restaurant, gave the address of that restaurant as [REDACTED]. Why Mr. [REDACTED] who claimed on May 13, 2004 that the Curry and Tandoor was his former restaurant, rather than his current restaurant, was, on May 1, 2004, issuing employment verification letters on Curry and Tandoor letterhead, is unknown to this office.

Further, as was noted above, the applicant was required to list all of his employment since coming to the United States on his Form I-687. The applicant did not list any construction work on that form. This additional employment claim, not mentioned on the Form I-687 application, casts doubt on the veracity of [REDACTED]'s affidavit and on the veracity of the

balance of the evidence in the record. The May 13, 2004 affidavit of [REDACTED] will be accorded no evidentiary value.

- The record contains a letter, dated May 14, 2004, from [REDACTED], an acquaintance of the applicant. In that letter Mr. [REDACTED] states that he has known the applicant “since his arrival in New York around November, 1981,” and that the applicant now lives in the United States permanently. That letter does not indicate whether the applicant has been absent from the United States since his arrival or for how long. The other questionable evidence submitted diminishes the credibility of that letter. That letter is accorded very little evidentiary weight, and only as support for the proposition that the applicant entered the United States during late 1981.
- The record contains a letter, dated June 13, 1994, from [REDACTED] the manager of the Pennington Hotel in New York City. Ms. [REDACTED] stated that she has known the applicant since 1981, presumably in the United States, and that he worked in construction as necessary and worked for her hotel first as a part-time porter from 1982 to December 1989 and subsequently as a security guard. Although a notary placed his stamp on that letter, he did not indicate that the declarant swore to the contents of the letter.

Although this letter states that the applicant worked in construction after moving to the United States, the applicant mentioned no such employment on the Form I-687, where he was required to list all employment in the United States since he first arrived. Further, for a notary to place his stamp on a letter but not attest that the contents were sworn to is very irregular.

Because of the damage to the credibility of [REDACTED]'s letter caused by the contradiction between that letter and the Form I-687, the irregularity in the notary's attestation, and the general damage to credibility occasioned by all of the other questionable evidence in the record, this office accords [REDACTED]'s June 13, 1994 employment verification letter no evidentiary weight.

- The record contains a letter, dated May 29, 2006, from [REDACTED], an acquaintance of the applicant. Photocopies of a cancelled check and a deposit slip showing that the declarant was then in the United States accompany the letter. The letter states that the declarant met the applicant in New York City when the applicant moved to the United States during 1981. The declarant further stated that he met the applicant on various religious occasions and helped him to find employment. Because of the anomalies in the other evidence presented, that letter is accorded very little evidentiary weight.
- The record contains another letter, also dated May 29, 2006, from [REDACTED]. Mr. [REDACTED] gave the same address as [REDACTED] in Ozone Park, New York. A receipt for license plates, issued on October 28, 1985 by the New York State Department of Motor Vehicles, accompanied that letter. That letter states that a [REDACTED], by which he apparently means [REDACTED], introduced the applicant to [REDACTED] during 1981 and asked [REDACTED] to help him find

employment. Because of the anomalies in the other evidence presented, that letter is accorded very little credibility, and only as to the applicant's presence in the United States at some time during 1981.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated May 10, 2006, the director observed that the applicant had not submitted sufficient credible evidence to demonstrate his entry into the United States prior to January 1, 1982 and his claim of continuous residence in the United States during the requisite period. The director also noted that, on a G-325A Biographic Information form that the applicant signed on March 1, 2002, the applicant stated that his last address outside the United States was in Baridhara, Dhaka, Bangladesh, and that he lived there from August 1953 to November 1982. The director noted that the applicant could not, consistent with that statement, have lived in the United States beginning before January 1, 1982. The director granted the applicant thirty days to submit additional evidence.

In response counsel submitted the May 29, 2006 letters of [REDACTED] and [REDACTED], both of which are described above. Counsel also asserted, as his chief argument, that the applicant had not been accorded his legalization interview, and implied that due process required that interview before CIS could act on the instant application.

In the Notice of Decision, dated August 11, 2006, the director reiterated that the applicant had not demonstrated his continuous residence in the United States during the requisite period and denied the application.

On appeal, counsel renewed his argument that the failure to accord the applicant a legalization interview prior to denying the application was an impermissible procedural error. Counsel also noted that he was submitting new evidence, and implied that the applicant did not understand the contents of a document he signed on July 27, 2005 and that the evidence in the record is sufficient to demonstrate the applicant's eligibility.

The substantive issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. That issue may not be reached, however, without first addressing counsel's assignment of procedural error.

Counsel argues, but, other than the applicant's assertion, provides no evidence to support, that the applicant was not accorded his legalization interview. The assertion of both counsel and the applicant is that the applicant appeared for his interview, but the interviewing officer was unable to find the file, and indicated that the interview would be rescheduled.

According to counsel and the applicant, all that transpired on July 27, 2005, the date of the contested interview, is that the interviewing officer presented a document for the applicant to sign. Counsel

stated, on appeal, that “[the applicant] had the impression from the Officer that he has been signing [sic] the document to prove his presence for the interview.” Counsel did not state what, if anything, the office said to engender the misconception that the applicant was signing a mere acknowledgement of attendance.

The record contains no evidence to support the assertion that the legalization interview did not take place or that the interviewing officer indicated that the applicant’s legalization interview would be rescheduled. That the applicant signed a record of sworn statement on July 27, 2005 in the presence of an officer of CIS appears to indicate that he was interviewed on that date.

The contention counsel emphasized on appeal is that the applicant must be accorded an interview. This office finds that he was accorded an interview and is not entitled to another. Further, counsel has not demonstrated, nor even attempted to demonstrate, that whatever substantive issues he would have addressed at an additional interview could not be addressed on appeal.

The other issues to which counsel alluded on appeal are that the applicant was unaware of the content of his signed statement, and it should not, therefore, be used against the applicant, and that the evidence in the record demonstrates the applicant’s eligibility.

The decision of denial states, “You claim[ed] [in the sworn statement of July 27, 2005] that you entered the United States on 10/3/81 without a visa through the Bahamas.” That is the sole reference in that decision to the content of the applicant’s July 27, 2005 statement. This office finds that the content of that statement was not used against the applicant, and that counsel’s assertion that it should not be used against the applicant’s interests need not, therefore, be further addressed. That the applicant signed that statement was used against the applicant in the director’s finding, and this office’s finding, that the applicant was interviewed. As counsel and the applicant do not contest that the applicant signed the affidavit, however, and the use of his signature to demonstrate his presence at the interview was proper.

The remaining issue is whether the evidence in the record demonstrates the applicant’s continuous residence in the United States during the requisite period.

The record contains no contemporaneous evidence to demonstrate that the applicant was in the United States at any time during the requisite period, from let alone that he resided in the United States continuously during that period. The credibility of the letters and affidavits in the record has been degraded, and in some instances destroyed, as is detailed above. Those items of evidence with some vestigial credibility remaining support, weakly, that the applicant was present in the United States at some point during 1981, but not that he remained here.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 the United States during the period required by 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. The appeal will be dismissed.

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