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ADMINISTRATIVE APPEALS OFFICE
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U.S. Citizenship
and Immigration
Services

L1



FILE:

[Redacted]
MSC-05-211-10069

Office: NEW YORK

Date: JUL 08 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to read "R. 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, 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 on April 29, 2005. In denying the application, the director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods. Specifically, the director found that the affidavits submitted by the applicant were neither credible nor amendable to verification. The director also noted inconsistencies in the record which, according to the director, the applicant had failed to adequately explain.

On appeal the applicant, through counsel, states that the director discounted the probative value of the affidavits submitted without providing cogent reasons for doing so, and that the inconsistency noted by the director was “very minor” and does not “go to the substance of the application.” The applicant has not submitted additional evidence on appeal.

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)(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).

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. Cardoza-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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application to Citizenship and Immigration Services (CIS) on April 29, 2005. At part #30 of the I-687 application, where applicants were asked to list all residences since their first entry into the United States, the first period of residence listed by the applicant began in October 1981. At part #33 where the applicant where applicants were asked to list all employment in the United States, the first period of employment began in 1982.

The applicant submitted the following documents in support of his I-687 application:

- Letter from [REDACTED], dated July 26, 2004. The letter states that the applicant worked part-time for [REDACTED] from October 1981 to 1987 as a sweeper. As noted by the director, the applicant did not list this employment on an I-687 application which was submitted in 1990. Instead, the applicant listed his occupation as free lance painter for that period. The applicant has explained that he did not list [REDACTED] as his employer because at the time he was working for [REDACTED] he was also working as an independent contractor for other people. This appears to be a plausible explanation by the applicant. However, the letter is deficient in that it does not comply with the regulations relating to past employment records. For example, the letter does not provide the applicant’s address at the time of employment,

does not provide the exact period of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a “relevant document” under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M-* 20 I&N Dec. at 81. However, the letter lacks any details that would lend it credibility. The letter therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Affidavit of [REDACTED], signed and dated July 23, 2004. The affiant states that the applicant lived with him at [REDACTED], Brooklyn, NY from October 1981 to November 1983. Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

Affidavit of [REDACTED], signed and notarized July 23, 2004. The affiant states that the applicant lived with him at [REDACTED], Brooklyn, NY from December 1983 to March 1990. The affidavit lacks details of the affiant’s relationship with the applicant such as how the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Affidavit of [REDACTED], signed and notarized March 13, 2003. The affiant states that he has personal knowledge that the applicant resided in Brooklyn, NY from November 1981 to the present. The affiant does not provide the applicant’s exact address for this period. The affiant also fails to provide details of his relationship with the applicant such as how he came to know the applicant, how he dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Letter from [REDACTED] of the Bangladesh Society of New York, Inc. The letter is not dated. The letter states that the applicant was a member of the Bangladesh Society from November 1983 to July 1999. However, the applicant indicated on his I-687 application that he resided in Ft. Lauderdale, FL from 1990 until 1993. It is doubtful that the applicant would have been actively involved in the religious and social activities of the Bangladesh Society of New York while he was living in Florida. Further, the letter fails to comply with the regulatory requirements for attestations by churches and other organizations in that it does not state the address where the applicant resided during his membership period, does not establish how the author knows the applicant and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). This letter therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Letter from [REDACTED] stating that the applicant was associated with the Madina Muslim Religious Institute from January 1982 to July 1990. The letter is not dated. The letter is written on letterhead of the Islamic Council of America, Inc. It is not clear what, if any, connection exists between the Islamic Council of America and the Madina Muslim Religious Institute. Further, the letter fails to comply with the regulatory requirements for attestations by churches and other organizations in that it does not state the address where the applicant resided during his membership period, does not establish how the author knows the applicant and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED], signed and notarized November 4, 2005. The affiant states that he has known the applicant since childhood and that the applicant first arrived in the United States on October 12, 1981. The affiant further states that the applicant first entered in Florida and went to New York shortly thereafter. The affiant states that he visited the applicant frequently at his addresses in Brooklyn, NY. The affiant fails to provide details regarding his claimed relationship with the applicant such as how he dates his initial acquaintance with the applicant or the nature and frequency of their contact. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a customer receipt from the United States Postal Service and money order receipt in support of his application. Neither of these documents contains a legible date and thus it cannot be determined whether these documents fall within the requisite period. Given the lack of a legible date, these documents cannot be given any weight as evidence of the applicant's residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The evidence submitted by the applicant does not establish, by a preponderance of the evidence, that he resided continuously and was physically present in the United States throughout the requisite periods. The affidavits submitted by the applicant are insufficient to establish that the applicant resided continuously in the United States throughout the requisite period. The receipts submitted by the applicant are not dated and thus do not support the applicant's claim of continuous residence. 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 for the requisite period. 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.