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U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA

Date: JUL 23 2008

MSC 06 084 12935

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, 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. 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, Pennsylvania. 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 December 23, 2005. On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) the application, noting that the applicant had not provided evidence of eligibility. The applicant was interviewed on June 8, 2006.

The director denied the application on August 10, 2006. The director found that the applicant admitted that he did not visit an immigration office to apply for legalization between May 4, 1987 and May 4, 1988 because he was not in the United States during this time period. The director concluded that the applicant had not demonstrated by a preponderance of the evidence that he had resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245a of the Act, and is otherwise eligible for adjustment of status under this section.

On appeal, the applicant asserts that the director did not give a good reason when finding an affidavit submitted by [REDACTED] deficient. The applicant also claims that he did not return to Egypt on a false passport as he has never used fake documents. The applicant acknowledges he left the United States to visit his sick mother and returned to the United States in October 1988. The applicant does not state when he left the United States for this visit and does not challenge the director's finding that he left prior to May 4, 1987. The applicant indicates his mother passed away in the beginning of 1989.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period.

The Form I-687 submitted on December 23, 2005 is heavily annotated with red ink, a practice used by Citizenship and Immigration Services (CIS) officers when interviewing applicants and attempting to clarify data. The Form I-687, without red annotations shows: that the applicant last entered the United States on October 4, 1988 as a B-1/B-2 visitor; that the applicant's address in the United States from March 1980 to April 1996 was [REDACTED] et, New York, New York; that the applicant's B-1/B-2 visa was issued on July 6, 1988 and that the applicant's authorized stay in the United States expired on July 31, 1988; and that the applicant was absent from the United States from August 1988 to October 1988 as his mother had passed away.

The applicant submitted page 36 from a passport showing that a B-1/B-2 visa was issued in Alexandria on July 6, 1988 for a one-time entry into the United States, expiring October 5, 1988. Page 37 of the

passport shows a departure stamp from New York, New York dated October 4, 1988. The applicant also submitted a photocopy of a certification from the Consulate General of Egypt in New York dated March 21, 1991 stating that the applicant was issued a replacement passport on March 19, 1991 and that the applicant "registers in the Consulate yearly since June 16, 1981." The record also contains two affidavits: (1) an affidavit dated February 7, 2005 signed by [REDACTED] who declares that the applicant resided in New York from December 1981 to June 1985 and that the longest period he has not seen the applicant is three years and six months; and (2) an affidavit dated May 23, 2006 signed by [REDACTED] who declares that the applicant resided in Union City, New Jersey from May 1982 to May 22, 2006 and that the longest period he has not seen the applicant is four years and eight months.

The AAO has reviewed the documentation submitted and observes the following deficiencies and discrepancies. The applicant's Form I-687 completed and signed by him indicates his only absence from the United States was from August 1988 to October 1988 because his mother had passed away. The pages submitted from the passport the applicant submitted shows that the applicant was in Alexandria obtaining a visa on July 6, 1988, three weeks prior to his claimed absence from the United States. In addition, on appeal the applicant indicates his mother passed away in 1989, an inconsistency with the information he provided on his Form I-687. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The two affidavits submitted on the applicant's behalf conflict. One individual indicates the applicant lived in New York from December 1981 to June 1985, while one individual indicates the applicant lived in Union City, New Jersey from May 1982 to May 2006. In addition, to the inconsistency regarding the applicant's residence, both affiants indicate that the longest period they have not seen the applicant is three or four years. The fact that both affiants have not seen the applicant for significant periods of time requires the conclusion that neither affiant has established that the applicant has continuously been in the United States for the requisite periods of time. Further, neither affidavit provide detailed information regarding the circumstances and events describing how these individuals met the applicant and interacted with the applicant during the requisite period. For the above reasons, the AAO finds that neither of the affidavits is probative.

The AAO has also reviewed the photocopy of the certification from the Consulate General of Egypt in New York dated March 21, 1991. The photocopy, however, is insufficient in this matter to establish the authenticity of the document and as noted at 8 C.F.R. § 245a.2(d)(6), greater weight will be given to the submission of original documentation. The AAO does not find this document probative.

These deficient and inconsistent affidavits, a photocopy of a document and the applicant's inconsistent written testimony comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack credibility and probative value for the reasons noted. 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 contradictions 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 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. The appeal will be dismissed.

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