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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 130 10469

Office: NEWARK

Date: JUL 24 2008

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:

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.

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, Newark. 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 he 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).

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:

Employment Letters/Affidavits

- The applicant submitted a sworn statement from [REDACTED] manager of KAMAL GENERAL CONSTRUCTION (KGS), stating that the applicant worked under the management of KGS on a part-time hourly basis as a painter earning \$6.50 per hour from October of 1989 until December of 2002.
- The applicant submitted a notarized statement from [REDACTED], manager of L.EDWARDS HOME IMPROVEMENTS (LEHI), stating that the applicant worked under the management of LEHI as a part-time construction helper from October of 1987 until December of 1996 earning \$5.50 per hour. LEHI states that the applicant was paid in cash because the applicant was an undocumented alien.
- The applicant submitted a sworn statement from the general manager (signature illegible) of N.S. GENERAL CONTRACTOR (NSGC) stating that the applicant worked under the management of NSGC on a part-time hourly basis as a painter earning \$5.00 per hour from December of 1980 until October of 1987.

- The applicant submitted a sworn statement from [REDACTED] stating that he had known the applicant since 1981, and that the applicant “sometimes worked” for [REDACTED] from 1985 through 1988. The affiant further states that the applicant entered the United States before January 1, 1982, and that the applicant was continuously physically present in the United States, except for a brief, casual and innocent departure. The affiant further states that the applicant attempted to file a legalization application between May 5, 1987 and May 4, 1988, but that the application was not accepted by immigration officials because the applicant had traveled outside the United States without advance parole.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) also provides that letters from employers should be on employer letterhead stationery. None of the letters/affidavits of employment provided by the applicant fully comply with 8 C.F.R. § 245a.2(d)(3)(i), and are, therefore, of little evidentiary value. None of the employer statements provide the applicant’s address at the time of employment. Nor do the statements declare that the information provided was taken from company records, identify the location of any such records, or state that the records are accessible, or alternatively, why any such records are unavailable. As such, the records are not deemed probative or credible because they fail to provide sufficient verifiable detail establishing that the applicant was, in fact, employed by those people/organizations during the times attested to.

Organization Attestations

The affiant submitted a notarized statement from [REDACTED] Secretary for the Muslim Community Center of Brooklyn, Inc. (the Center). Mr. [REDACTED] states that the applicant has been a member of the Center since 1982, that he participates in its Friday congregations, and that he makes contributions towards the development of the organization. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations to an applicant’s residence by churches, unions, or other organizations may be made 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 provided by the Center does not establish the applicant's residence during the requisite period as it does not comply with the above cited regulation. The attestation by [REDACTED] does not: state the address where the applicant resided during his membership period (since 1982, as stated by [REDACTED] on May 25, 1991); establish in detail how the statement's author would know the applicant and have personal knowledge of his whereabouts from 1982 until the date of the Center's letter; and establish the origin of the information being attested to, that the applicant was a member of the Center since 1982. The attestation letter does not reference organizational membership records or otherwise specifically state the origin of the information being attested to. For these reasons, the attestation is not deemed probative and is of little evidentiary value.

Affidavits

The applicant submitted affidavits from the following individuals who each attest that they have personal knowledge of the applicant's entry into the United States prior to January 1, 1982, and that the applicant has lived continuously in the United States since that time: [REDACTED]

[REDACTED]; and [REDACTED]. The majority of these applicant's also state that they have personal knowledge that the applicant attempted to apply for amnesty during the amnesty period, but was turned away because he had traveled outside the United States without advance parole.

As hereinafter explained, the affidavits provided lack sufficient detail to establish the applicant's continuous residence in the United States for the requisite period.

Applicant's Statements

The applicant submitted a notarized, but unsworn, statement on November 15, 2005. In that statement the applicant states, in pertinent part, that: he is a citizen of Bangladesh born on 2/8/1961; he entered the United States on October 16, 1980 without inspection, and that he has resided continuously in this country since that time except for a brief absence; and that he attempted to apply for legalization on several occasions but was refused after being told that he had traveled outside the United States without permission.

The applicant provided a sworn statement on December 15, 2004 in support of his application. The information provided in that sworn statement is virtually identical to the information provided in the applicant's November 15, 2005 notarized statement.

The applicant has submitted numerous affidavits, employment letters, a residence attestation from a Muslim Community Center, a notarized statement, and a sworn statement in support of his application. As noted previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The personal affidavits, employment letters and organizational attestation provided did not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. It is further noted, as set forth previously, that the employment letters and organizational residence attestation lack probative value as they do not comply with regulatory requirements governing the issuance of information by those individuals/entities.

Finally, the applicant's statements alone are not sufficient to sustain the burden of proof in these proceedings. 8 C.F.R. § 245a.2(d)(6). 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. 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 the affidavit and sworn statement of the applicant submitted fail 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.