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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

JUN 23 2008

MSC 06 059 12231

IN RE:

Applicant:



APPLICATION:

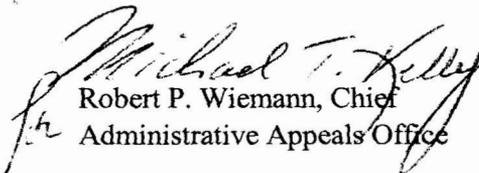
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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 November 28, 2005. The applicant was interviewed on June 5, 2006 in connection with his Form I-687. On July 3, 2006 the director issued a Notice of Intent to Deny (NOID) the application. Upon review of the record, including the applicant's July 20, 2006 rebuttal, the director denied the application.

On appeal, counsel for the applicant asserts that the applicant and an affiant [REDACTED], are willing to appear or to provide any additional information to substantiate that the applicant was intermittently employed in the United States from 1981 to 1988.

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.* 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 through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States in October 2001. The applicant indicated he had lived at [REDACTED], Brooklyn, New York from September 1981 to September 1988 and that he had next lived in the United States at [REDACTED] Chicago, Illinois for a one-month period in October 2001 before moving to Texas for the month of November 2001. The applicant listed his next addresses as in Brooklyn, New York from November 2001 to January 2002; Houston, Texas from January 2002 to July 2004; Magnolia, Texas from July 2004 to August 2005; and then East Meadow, New York from August 2005 to the date of filing the application. The applicant listed his employment during the 1981 to 1988 time period as: India Walk Shoes in Brooklyn, New York from November 1981 to December 1983; Raphael Jewelry in New York, New York from January 1984 to December 1985; and Maram Pharmacy Ltd. in Jackson Heights, New York from January 1986 to August 1988.

The record also includes:

- A February 1, 2006 affidavit signed by [REDACTED] who declared that he has known the applicant since approximately the winter of 1981 when he used the applicant's services for cleaning and snow removal at his diner. [REDACTED] also declared that he had interacted with the applicant on a regular basis since 1981 through the present time except for the period of time between 1988 and 2001 when the applicant departed to Pakistan where he lived for 12 or 13 years before returning to the United States in 2001.

- A May 25, 2006 affidavit signed by [REDACTED] who declared that he had known the applicant since 2005.
- A letter dated May 24, 1984 authored by [REDACTED] M.D. of New York referencing the applicant and indicating that the applicant had been in his care since December 9, 1983.
- A reference letter dated December 28, 1983 authored by the assistant sales manager of India Walk Shoes certifying the applicant had worked as a sales person from September 1981 to December 1983 for the company.
- A reference letter dated December 26, 1985 authored by one of the vice-presidents of Raphael Jewelry indicating the applicant had worked as a stock person for his company from January 1984 to December 1985.
- An April 20, 1988 letter authored by [REDACTED], M.D. certifying the applicant had been his patient since January 1985.
- A March 15, 1988 letter signed by [REDACTED] on the letterhead of the United American Muslim Association of New York certifying that the applicant had been a registered member of the Association from November 1981 to March 15, 1988.
- An August 30, 1988 letter advising that the applicant had worked for Maram Pharmacy Ltd. As a sales person from January 1986 to August 1988.

The record further includes: (1) a photocopy of two wedding invitations issued to the applicant, one inviting him to a wedding on April 10, 1982 in New York and a second inviting him to a wedding on July 7, 1983, also in New York - the applicant's name and address are handwritten on the invitations; (2) a letter dated June 14, 1982 addressed to the applicant referencing a disputed hotel bill dated June 3, 1982; (3) a November 26, 1981 letter from the New York telephone company acknowledging receipt of the applicant's request for a telephone connection; and (4) a copy of a lease agreement indicating the lease beginning date as September 25, 1981 for a period of two years and showing the applicant as the tenant.

The record also contains the applicant's January 22, 2003 Form G-325A, Biographic Information, submitted with a Form I-130, Petition for Alien Relative. The applicant lists his address as [REDACTED], Islamabad, Pakistan from March 1976 to October 2001. The record¹ further includes:

¹ The AAO has considered all of the evidence of record, including the letters submitted by [REDACTED], M.D., [REDACTED] and the reference letters submitted by India Walk Shoes, Raphael Jewelry, and Maram Pharmacy, Ltd. The AAO observes that the fact that the doctors are not listed among the licensed at the time of the director's decision does not mean that the doctors were not licensed at the time the

(1) a printout from the New York State Education Department website, www.nysed.gov, that does not list either [REDACTED] or [REDACTED] as current licensees in the medical professions; and (2) printouts from the New York Department of State Division of Corporations website, <http://appsext5.dos.state.ny.us/corp>, that shows that Indian Walk Shoes Franchise, Inc. is inactive; that Maram Pharmacy, Ltd. is inactive; and that Raphael Jewelry Manufacturing, Inc. is active.

In the July 3, 2006 NOID, the director notified the applicant that the affidavits, letters, and lease agreement he had submitted were not credible as the documents were not subject to verification. In rebuttal, the applicant noted that the evidence he submitted pertained to a period of over 25 years ago and that he had no means to bring forward counter evidence to rebut the director's NOID. The applicant noted that the director had not attempted to contact [REDACTED], an individual who knew the circumstances of the applicant's physical presence in the United States from before January 1, 1982 until May 4, 1988.

In the director's August 21, 2006 denial decision, the director acknowledged [REDACTED]'s affidavit but determined that the affidavit did not contain proof, such as photographs, etc. or a telephone number where the affiant could be reached. The director determined that the applicant had not provided evidence to show that he had resided in the United States for the requisite periods.

As observed above, counsel for the applicant asserts that the applicant and an affiant, John Petrakis, are willing to appear or to provide any additional information to substantiate that the applicant was intermittently employed in the United States from 1981 to 1988.

The AAO finds that the applicant's information submitted on the Form 325-A regarding his residence in Pakistan including the 1981 to 1988 period conflicts with the applicant's information provided in the present application. 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 applicant has provided affidavits and statements that do not provide sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the document originators and their subsequent interaction to overcome the doubt cast by the applicant's inconsistent statements regarding his residence during the requisite time period. The statements and letters reflect a lack of concrete and specific details. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

The employment letters do not provide periods of layoff, declare whether the information was taken from company records, identify the location of such company records, and state whether the records are accessible or state the reason why the records are not available as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters submitted by the doctors, even if licensed at the time of the letters, do not cover the entire pertinent time period. Likewise, the wedding invitations, the disputed hotel bill, the lease agreement, and the request for telephone service are independent one-time events that encompass only a

letters were written. Likewise, the fact that a business was in inactive status when the director's decision was issued does not indicate that the business was not active previously.

small portion of the requisite time period. The letter from the American Muslim Association does not contain the information required of religious organizations by 8 C.F.R. § 245a.2(d)(3)(v). Moreover, a review of all the evidence of the record suggests that the applicant has not been truthful regarding his whereabouts during the requisite time period. In the context of the totality of the evidence of record in this proceeding, the unsupported affidavit of one individual, who indicates that he is willing to testify that he intermittently employed the applicant in the United States from 1981 to 1988, is insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and unlawful presence in the United States for the requisite time period.

These deficient statements, the unsubstantiated information, and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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.