



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-295-12633

Office: NEW YORK Date: JUN 23 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:

[REDACTED]

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 director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the applicant stated in his interview with a Citizenship and Immigration Services (CIS) officer that he first entered the United States in 1984. In addition, where the I-687 application asks for “*all of your residences in the United States since your first entry, beginning with your present address,*” the applicant listed only one address going back to 1990. Further, the applicant listed an address in West Germany as his residence from September 1977 through May 1984 on a Biographic Information form submitted with an asylum application that he filed in July of 1984.

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) 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. See 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).

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 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, 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 and Supplement to Citizenship and Immigration Services (CIS) on July 22, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the first period of residence the applicant listed began in 1990. In addition, the applicant testified under oath before an immigration officer that he first entered the United States in 1984. This casts doubt on the applicant’s claim to have resided in the United States throughout the requisite period, and tends to show that he entered the United States for the first time in 1984.

The record also includes the following documents in support of the applicant’s claim of residence in the United States during the requisite period:

- Declaration of [REDACTED], signed and dated November 10, 2006. The declaration has not been notarized. The declarant states that he is the applicant’s cousin and that the applicant lived with him for a few months beginning in June 1980 at [REDACTED], Paterson, NJ 07505. The applicant did not list this address as a residence on Form I-687 and has not explained his failure to do so. In addition, the declaration lacks details of the declarant’s relationship with the applicant that would lend credibility to the affidavit. This declaration therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Declaration of [REDACTED], President of the Bangladesh Society of Bronx, NY, signed and dated May 16, 2005. The declaration has not been notarized. The declarant states that the applicant lived with him at [REDACTED], New York, NY 10002 until September 1984. The applicant did not list this address as a residence on Form I-687 and has not explained his failure to do so. In addition, the declaration lacks details of the

declarant's relationship with the applicant that would lend credibility to the declaration. Further, the declarant incorrectly lists the applicant's present address as [REDACTED], Long Island City, NY 11103. The applicant's address, as listed on Form I-687 is [REDACTED], Long Island City, NY 11103. This declaration 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 on November 9, 2006. The affiant states that she became acquainted with the applicant in 1980 at which time the applicant was working at the affiant's car service company, RRR Car Service, in Brooklyn, NY. The applicant listed on Form I-687 employment with "3R Car Service" in Brooklyn, NY beginning in 1987. The applicant has failed to explain the discrepancy in the dates of employment. 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 on November 5, 2006. The affiant states that he has known the applicant since 1980. However, the affiant fails to state how he met the applicant, or how frequently he saw the applicant during the requisite period. Therefore, this affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

There is substantial evidence in the record that contradicts the applicant's claims of residence in the United States during the requisite period. Specifically, the applicant filed a Form I-589 Request for Asylum in 1984. Included in the application is the Biographic Information Form G-325A in which applicant listed his residence as [REDACTED] in Hessen, West Germany from September 1977 through May 1984. In addition, the record contains a copy of Form I-110 dated May 15, 1984, in which the Immigration Inspector lists the applicant's date of entry as May 15, 1984 and the port of entry as Port Everglades, Florida. Finally, the record includes a copy of a passport issued to the applicant by the Government of the People's Republic of Bangladesh in 1977. This passport contains a stamp showing that the applicant was admitted to the Bahamas on May 13, 1984. Taken together, these documents support the conclusion that the applicant entered the United States in May of 1984.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory statements on his applications and his 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 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.

According to the evidence in the record, the applicant was ordered deported on March 18, 1986.

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