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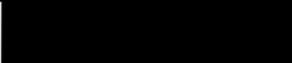
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 04 338 10182

Office: NEW YORK

Date:

MAR 05 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:

Self-represented

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.

A handwritten signature in black ink, appearing to read "D. K. ...".

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. 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 the since he “was an undocumented alien . . . [when] I entered the United States, I barely have enough documents that represent my continuous physical presence during the statutory period;” that the affidants that have presented statements along with their personal identifications have no relation to the applicant; and that the acting director has over-looked the applicant’s earlier response, that he is eligible.

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. 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 applicant submitted a partial copy of his passport from The People’s Republic of Bangladesh issued August 5, 2004.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on September 2, 2004. 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 applicant showed his first address in the United States to be at [REDACTED], Elmhurst, New York from May 1980 to September 1986. Similarly, at part #33, he showed his first employment in the United States to be for [REDACTED] New York, New York, in the occupation of “helper” from July 1980 to December 1985.

According to the record of proceeding, the applicant first entered the United States without visa or inspection on May 1, 1980, by ship through Canada then into the United States. According to the Form I-687 application, the applicant departed the United States to visit friends on June 1987 and returned July 1987.

The applicant has submitted 14 declarations as found in the record of proceeding as described below:

The applicant submitted a notarized letter made by [REDACTED] on the letterhead of the Dallas B.B.Q., Manhattan, New York, made on October 12, 1998. [REDACTED] stated that the applicant was employed by Dallas B.B.Q. as a part time helper from January 1986 to December 1992. No other evidence was submitted concerning this employment.

The applicant submitted a notarized letter made by [REDACTED] on the letterhead of the [REDACTED], New York, New York, made on May 18, 2004. [REDACTED] stated that the applicant was employed by [REDACTED] from July 1980 to December 1985. No other evidence was submitted concerning this employment.

The applicant submitted two notarized letters made by [REDACTED] made December 21, 1992 and May 25, 2004, that the applicant is a friend of his, that the applicant entered the United States before January 1, 1982, and remained in continuous residence since that date "except for a brief absence." [REDACTED] stated that during the period between May 5, 1987 and May 4, 1988, the applicant made several attempts to file a legalization application but was refused.

The applicant submitted a notarized letter made by [REDACTED] on the letterhead of [REDACTED], Brooklyn, New York, made on June 13, 2004. [REDACTED] stated that the applicant is a neighbor of his, that the applicant entered the United States before January 1, 1982 and remained in continuous residence since that date "except for an innocent brief absence." [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but was refused.

The applicant submitted a notarized letter made by [REDACTED] of Woodhaven, New York. Mr. [REDACTED] stated that the applicant is well known to him since 1980. [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but it was not accepted.

The applicant submitted a notarized statement dated July 16, 1990, made by [REDACTED] of Elmhurst, New York. The statement was notarized on May 2, 1991. [REDACTED] stated that the applicant is well known to him since 1980. [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but was denied.

The applicant submitted a notarized statement made by [REDACTED], of Jackson Heights, New York, made on July 8, 2004. [REDACTED] stated that the applicant is well acquainted to him since 1980. [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but was denied.

The applicant submitted a notarized statement made by [REDACTED], of Brooklyn, New York, made on February 5, 1992. [REDACTED] stated that he knew the applicant since 1980. [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but was denied.

The applicant submitted a notarized statement made by [REDACTED] of Flushing, New York, made on March 1, 2006. [REDACTED] stated that he knew the applicant since 1980. [REDACTED] stated that during the period between May 1987 and May 1988, the applicant made several attempts to file a legalization application but was denied.

The applicant submitted a notarized statement made by [REDACTED], of Brooklyn, New York, made on August 10, 2006. [REDACTED] stated that he knew the applicant since "August 1981 (1981) or (1986 to 1988) and he first met the applicant in Elmhurst, New York. [REDACTED] stated that 17 years ago the applicant traveled to Canada from June 5, 1987 to July 12, 1987. Mr. [REDACTED] stated that applicant was continuously present in the United States in 1986, 1987 and 1988.

The applicant submitted a notarized statement made by [REDACTED], of Jamaica, New York, made on August 15, 2006. [REDACTED] stated that he knew the applicant since "December 1981 (1981) or (1986 to 1988) and he first met the applicant in Brooklyn, New York. [REDACTED] stated that 17 years ago the applicant traveled to Canada from June 5, 1987 to July 12, 1987. [REDACTED] stated that applicant was continuously present in the United States in 1986, 1987 and 1988.

The applicant submitted a notarized statement made by [REDACTED], of the Bronx, New York, made on June 3, 2004. [REDACTED] stated that he knew the applicant since 1980. Mr. [REDACTED] recites six of the applicant's residential addresses from May 1980 to present (i.e. June 3, 2004) during the period between May 1987 and May 1988. According to [REDACTED], he knows that the applicant was out of the United States on vacation 17 years ago from June 5, 1987 to July 12, 1987.

The applicant submitted a statement made by [REDACTED] Vice President, of the Islamic Council of America Inc., of New York, New York, made on August 11, 2006. [REDACTED] stated that while he was Iman from 1982 to 1986, he saw the applicant attending Jum'aa prayer and other Islamic holidays.

It is noted that of the 14 statements submitted, no declarant provide independent, objective and verifiable evidence to support their respective statements. The affidavits received from the employer's affidavits did not meet the requirements of the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The affidavit from the Islamic Council of America Inc. did not meet the requirements of the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Most of the declarants did not state with any specificity where they first met the applicant, how they date their acquaintance with him, if they in fact had a continuing, direct personal relationship with the applicant or whether they have direct knowledge of the addresses at which he was residing during the critical time period between 1981 and 1983. All of the statements of the declarants' provide uniformly ambiguous references to the applicant. The lack of any substantive correlative evidence of the applicant's first entry into the United States, travel or employment information, bank references or statements or receipts of any kind for rental, utility, food, clothing or other necessities renders the applicant's and declarants' statements regarding the events and circumstances of the applicant's residence less persuasive. For these

reasons, all of these declarations from the applicant's declarant's have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

In summary, the applicant has not provided any correlative evidence of residency in the United States relating to the requisite period except for the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, 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 he 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.