



U.S. Citizenship
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FILE: [Redacted]
MSC 05-326-13053

Office: NEW YORK

Date: **NOV 28 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:



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 "John F. Grissom".

John F. Grissom, Acting 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 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 denied the application, finding 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. In saying this, the director noted that the record was not consistent regarding the applicant's absences from the United States during the requisite period and that the applicant submitted a highly suspect document in support of his application.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and his counsel attempts to explain why the record is not consistent regarding the applicant's absences during the requisite period.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 issues in this proceeding are whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time or that he (3) is admissible as an immigrant. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and family, a lease, and statements from the applicant and his counsel. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted declarations from his brother, [REDACTED], who states that the applicant left Malaysia for the United States in February of 1981 and from [REDACTED], who states that the applicant is his friend and that he left Malaysia in February of 1981. As both men state that they currently reside in Malaysia and as they do not state that they personally know that the applicant resided in the United States during the requisite period, their statements carry no weight as evidence of the applicant’s residence in the United States during that period.

The applicant also submits an affidavit from [REDACTED] who states that he met the applicant in the United States in 1981. He further states that the applicant was absent from the United States when he went back to Malaysia in 1987 to get married, returning to New York in July 1987. Though this testimony is consistent with testimony given at the time of the applicant’s interview with a Citizenship and Immigration Services (CIS) officer regarding his Form I-687 application and with a statement made by his counsel in February 2007, this absence is not consistent the applicant’s Form I-687 regarding his absences during the requisite period. Though this affiant states that he had meals together with the applicant after the applicant

came to the United States, he does not state the frequency with which he did so. He further does not state how is able to determine the date he first saw the applicant in the United States.

This witness statement further fails to provide concrete information, specific to the applicant and generated by the affiant's asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

Though the statements from [REDACTED] and [REDACTED] establish that both men had relationships with the applicant in Malaysia, these declarants do not state that they personally know that the applicant resided in the United States during the requisite period. Though [REDACTED] provides some details regarding his relationship with the applicant, it is not sufficient to satisfy the applicant's burden of proof. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains the applicant's Form I-687 and other statements from the applicant and his counsel regarding his residence in and absences from the United States during the requisite period. However, as will be discussed, these statements are not consistent regarding the applicant's absences during the requisite period.

The applicant's Form I-687 states that his only absence from the United States during the requisite period occurred in February 1987, when he went to Canada for a visit. Collectively, in both an undated, unsigned affidavit, and in a second affidavit that is dated in November 2006, the applicant also states that he departed the United States in February 1987 when he went to Canada for a day trip. However, at the time of his interview regarding his Form I-687, the applicant did not state that he was absent from the date he entered the United States until June of 1987, when he went to Malaysia. In February of 2007, counsel for the applicant explains that the applicant was absent from the United States both in February 1987 and then again when he went to Malaysia for a visit later in 1987. Though not within the requisite period, the applicant consistently stated that the only other absence he had from the United States was from December 1994 to January 1995. However, after the director noted in her NOID that the photocopy of the applicant's passport revealed another absence in 1999, the applicant attempted to account for this absence, stating that he neglected to reveal it because it corresponded with his mother's death and funeral. These inconsistencies regarding the applicant's absences both during and subsequent to the requisite period cast doubt on whether the applicant has fully disclosed his absences from the United States to Citizenship and Immigration Services. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains a photocopy of a lease that is purportedly valid for the period beginning on February 26, 1981 and ending on March 31, 1983. However, on the second page of this lease, there is a notation regarding the "EPA and HUD Lead Paint Regulations, which were effective beginning on September 6, 1996." Because this lease makes reference to regulations that were not passed until 1996, it is not possible that this lease could have been completed prior to that year. Therefore, grave doubt is cast on the credibility of this document such that it appears that the applicant may have engaged in fraud or misrepresentation to obtain an immigration benefit. Though the director also noted this discrepancy, the applicant did not address it or attempt to provide an explanation for it on appeal.

The inconsistency in this lease is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra.*

Though the director previously noted this discrepancy and stated that she found it called into question whether the applicant was admissible as an immigrant pursuant to Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, the applicant failed to provide an explanation for this discrepancy or to rebut its existence on appeal.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he is admissible as an immigrant or that he entered the United States before January 1, 1982 and 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.