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FILE:



Office: NEW YORK CITY

Date:

OCT 10 2008

MSC 05 253 15553

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. 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.

for
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 director in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

An applicant for temporary resident status under Section 245A of the Immigration and Nationality Act (the Act) 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).

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.

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 (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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Pakistan who claims to have lived in the United States since June 1981, filed a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on June 10, 2005. At that time the record included the following evidence of the applicant’s residence in the United States during the years 1981-1988:

- An affidavit from [REDACTED] dated April 3, 1990, stating that he knew that the applicant traveled to Pakistan around June 1987 and returned to the United States around July 1987.
- A letter from [REDACTED], the imam of Masjid Ur Rashid, Inc. Islamic Teaching Center of Beacon, New York, dated June 18, 2001, stating that the applicant is an active religious member of the center since 1982, that he attends prayer services regularly and participates in religious classes and work projects.

- A letter from [REDACTED], a resident of Beacon, New York, dated June 20, 2001, stating that he has known the applicant since 1982, that they are both members of the same religious community, and that they spend time together at religious services and other projects.
- A letter from [REDACTED], a resident of Washingtonville, New York, dated June 19, 2001, stating that he had known the applicant since 1982, and that they both worshiped at the same mosque.
- A letter from [REDACTED], a resident of Beacon, New York, dated June 19, 2001, stating that he and his family had known the applicant for the past eighteen years, that the applicant had served him and his family as a businessman many times, and that the applicant had contributed to community projects over the years for children.
- Another letter from [REDACTED], in his capacity as the imam of Masjid Ur Rashid, Inc. Islamic Teaching Center of Beacon, New York, dated January 29, 2004, stating that the applicant is an active religious member of the Islamic Center, that the applicant has been a member of the community since 1982, and that he attends prayer services, religious classes and work projects.
- A letter from [REDACTED] and [REDACTED], residents of Beacon, New York, dated January 29, 2004, stating that they have known the applicant for over eighteen years, that the applicant is a businessman in Beacon, and had served them and their family.
- An affidavit from [REDACTED] on the letterhead of Kennedy Fried Chicken in Newburg, New York, dated February 8, 2004, stating that he had known the applicant since 1987, and that they are good friends.
- Two letter envelopes from individuals in Pakistan, addressed to the applicant at [REDACTED], Bronx, New York, with postmark dates of September 15 and 16, 1982, and November 3, 1984.

On January 30, 2006, the director issued a Notice of Intent to Deny (NOID) the application. The director indicated that the evidence of record was insufficient to establish the applicant's continuous unlawful residence and continuous physical presence in the United States during the requisite period under the Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted a personal affidavit and copies of some documents that were already in the record.

On March 11, 2006, the director denied the application, stating that the information and documentation submitted in response to the NOID was insufficient to overcome the grounds for denial. The director indicated that the affidavits were neither credible nor amenable to verification, that the affiants did not provide evidence of their presence in the United States during the statutory period and proof that they had personal knowledge of the events attested. The director concluded that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his continuous residence and physical presence in the United States during the requisite periods. Counsel submits updated but virtually identical affidavits from some of the same individuals who previously submitted such documents. Counsel also submits a new affidavit from [REDACTED], a resident of Binghamton, New York, dated April 3, 2006, stating that he knew the applicant left Pakistan in 1981, that the applicant worked for [REDACTED] Company, that the applicant moved to Chicago in 1986, that they talked to each other on the phone when the applicant was residing in Chicago, and that when the applicant moved back to New York in 1991, they visited each other's homes and celebrated religious occasions together. No further evidence was submitted of the applicant's residence and physical presence in the United States during the 1980s.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The fundamental issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file for legalization during the original one-year application period that ended on May 4, 1988. The AAO determines that he has not.

The letter envelopes from individuals in Pakistan with postmark dates of September 15 and 16, 1982, and November 2, 1984, addressed to the applicant at [REDACTED], Bronx, New York, are clearly fraudulent because the stamps affixed to the envelopes were not issued by the government of Pakistan in the 1980s. The stamps of Mohammed Ali Jinnah on the envelopes are part of a series of stamps first issued on September 11, 1994, and again from 1998-2001. Scott 2006 Standard Postage Stamp Catalogue, Vol. 5, pp. 22, 25.

Thus the letter envelopes have no probative value as evidence of the applicant's presence and residence in the United States during the 1980s. Moreover, these fraudulent submissions cast doubt on the credibility and reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The letters from the imams of [REDACTED] Islamic Teaching Center of Beacon, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters from [REDACTED], dated June 18, 2001, and [REDACTED] dated January 29, 2004, do not state where the applicant lived at any point in time between 1981 and 1988, do not indicate how and when they met the applicant, and do not state whether the information about the applicant's activities in the Islamic Center since 1982 was based on their personal knowledge, Islamic Center records, or hearsay. Since the letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file for legalization during the original one-year application period that ended on May 4, 1988.

The letters and affidavits from [REDACTED] and [REDACTED] have minimalist formats providing few details about the applicant's life in the United States and his interaction with the affiants over the years. None of the authors provided any information about where the applicant resided during the 1980s and what sort of work he did. Nor are the letters and affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In addition, [REDACTED] did not state that he knew the applicant before 1987, and [REDACTED]

does not appear to have ever lived in the United States. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file for legalization during the original one-year application period that ended on May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file for legalization during the original one-year application period that ended on

May 4, 1988. Accordingly, the applicant is ineligible for temporary residence status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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