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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

OCT 10 2008

MSC-05-218-12826

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 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 because she found that 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. The director also found that the applicant provided conflicting information regarding his entry into the United States. The applicant stated on his Form I-687 application that he entered the United States in June of 1981, but testified before an immigration officer that he first entered the United States in January 1981.

On appeal, the applicant asserts that he entered the United States in June of 1981. In support of his appeal, the applicant submitted a copy of a Form I-687 application that he had previously submitted in 1990.

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 May 6, 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 applicant listed his residences as follows:

- [REDACTED] Brooklyn, New York from June 1981 until May 1989, and
- [REDACTED], Torrington, Connecticut from April 1989 until June 1996.

The information provided by the applicant conflicts with other information in the record. Specifically, the record contains a handwritten affidavit from [REDACTED] dated April 30, 1990. The affiant states that the applicant resided at [REDACTED] in Brooklyn, New York from October 1984 until September 1989. In addition, there is a second affidavit from [REDACTED] also dated April 30, 1990 which states that the applicant resides at [REDACTED] in Brooklyn, New York. Finally, the record contains a letter from [REDACTED], also dated April 30, 1990. In the letter, [REDACTED] states that the applicant resided with him at [REDACTED] in Brooklyn, New York from June 1981 until May 1989. Although the letter is consistent with the information provided by the applicant on his Form I-687 application, it is inconsistent with the affidavits by [REDACTED]. These are material inconsistencies which detract from the credibility of [REDACTED] written testimony.

Part #33 of the Form I-687 application asked applicants to list all employment in the United States since January 1, 1982. The applicant indicated that he had been self employed performing

“odd jobs” from June 1981 until the filing of his Form I-687 application. This conflicts with information provided by the applicant on the Form I-687 application that he submitted in 1990. On that application, the applicant stated that he had been employed as a salesman with A and H Game from November 1981 until June 1989. In addition, the record contains a letter from [REDACTED] dated April 30, 1990, which states that the applicant was employed by [REDACTED] at A & H Game Room from July 1981 until the time the letter was written. This is a material inconsistency which detracts from the credibility of the applicant’s claims.

The record also contains the following documents relating to the applicant’s residence in the United States during the requisite period:

- An affidavit from [REDACTED] dated May 18, 1990. The affiant failed to provide an address of phone number where he can be contacted. The affiant states that he has personal knowledge that the applicant resided in the United States since June of 1981. The affiant does not explain the basis of this knowledge, nor does he explain how he came to meet the applicant or how he dates his initial acquaintance with the applicant. Further, the affiant fails to provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- A letter from [REDACTED] of White Glove Janitorial, dated November 15, 1981. The letter states that the applicant worked for White Glove Janitorial in September and October of 1981. The letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant’s address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a “relevant document” under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M- 20 I&N Dec. at 81.* However, due to its minimal detail, the letter has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- A letter from [REDACTED], Secretary for the Muslim Community Center of Brooklyn, Inc. The letter, dated May 11, 1990, states that the applicant has been participating in Friday congregation prayers since 1984. It is noted that the applicant indicated on his Form I-687 application that he has no affiliations or associations with churches, clubs, or other organizations. Further, this letter fails to comply with the regulation for attestations by churches and other organizations in that it fails to state the address where the applicant resided during the membership period and fails to establish how the author knows the applicant. 8 C.F.R. § 245a.2(d)(3)(v). Even absent compliance with the regulation, the letter is considered a “relevant document” under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M- 20 I&N Dec. at 81.* However, the letter lacks probative details and therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The record also indicates that, at an interview before an immigration officer on November 28, 1990, the applicant was unable to name the store where he allegedly worked from July 1981 until April 1990.

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 contradictory information in the record and the applicant's reliance upon documents with little or no probative value, it is concluded that the applicant 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.

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