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U.S. Citizenship
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Services

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FILE:

MSC 05 053 10285

Office: NEW YORK

Date:

NOV 26 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:

[Redacted]

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 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 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.

While it is noted that the director raised the issue of class membership in the decision, the application was adjudicated on the merits. Therefore, the director is found not to have denied the application based on a finding that the applicant was not a class member.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and counsel for the applicant asserts that the director did not fully consider the evidence submitted by the applicant. Counsel further attempts to account for discrepancies noted by the director.

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 issue in this proceeding is 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. 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, and an attestation from a representative from the applicant’s mosque. 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 affidavits from [REDACTED] and [REDACTED] state that the affiants have known the applicant since December 1981 and October 1987 respectively. Though the affiants both claim that they first met the applicant in the United States and assert that he has resided in New York since that time, neither affiant states the frequency with which he saw the applicant during the requisite period or provides further details regarding their relationship with him during the requisite period. These affidavits are lacking in detail such that they can be accorded minimal weight as evidence of the applicant’s continuous unlawful residence in the United States from December 1981 and October 1987 respectively. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

Affiant [REDACTED] states that he cannot verify the applicant’s date of first entry into the United States, but asserts that the applicant resided in New York since October 1981 and that he knows this because

he saw him there at that time. [REDACTED] provides details of his initial meeting with the applicant and states that he saw the applicant both at his home and at the mosque on Fridays and states that the applicant also went to both his twin sons' naming ceremony and to their first birthday party in 1984. Though this affiant states that he frequently saw the applicant at the mosque during the requisite period, this is not consistent with the applicant's Form I-687, where the applicant did not state that he attended any churches or organizations. 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 applicant also submits an affidavit from [REDACTED], who states that he works in security and that he has known the applicant since 1982 when he attended services at the Masjid. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

In this case, the affidavit from [REDACTED] does not indicate the applicant's inclusive dates of membership in the Masjid, state the address where the applicant resided during his membership period or indicate how [REDACTED] can confirm the applicant's dates of membership in the Masjid. Further, the applicant did not state that he belonged to any churches or organizations when he submitted his Form I-687. Therefore, because this affidavit is lacking with regards to the regulatory requirements in the regulation at 8 C.F.R. § 245a.2(d)(3)(v) and because the applicant's membership in the Masjid is not consistent with his Form I-687, very minimal weight can be accorded to this affidavit as evidence of the applicant's residence in the United States during the requisite period.

The final item of evidence in the record is a declaration from [REDACTED] who states that he worked with the applicant in June of 1982 in Manhattan. However, this declarant does not state that he knows that the applicant resided in the United States either before or after June of 1982. Because this declarant does not state that the applicant resided in the United States continuously for part of all of the requisite period, it can be accorded no weight as evidence that he did so.

None of these witness statements provide concrete information, specific to the applicant and generated by the 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. Upon review, the AAO finds that, individually and together, the witness statements noted above do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavits presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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 the applicant's Form I-687 which was executed under penalty of perjury, and notes from his interview with a CIS officer pursuant to that application. The Form I-687 indicates that during the requisite period, the applicant resided on [REDACTED] in Elmhurst, New York from October 1981 until December 1986 and then on [REDACTED] in New York from December 1986 until the end of the requisite period. At the time of his interview with a CIS officer, the applicant stated that the applicant indicated that he resided on the fifth floor of residence on [REDACTED]. However, the director later noted that this building did not have five floors, which cast doubt on this assertion. As was previously noted, though the applicant has submitted a statement from [REDACTED] who states that he attended a mosque with the applicant and from [REDACTED] who attests to the applicant's attendance of a mosque, the applicant did not indicate that he was associated or affiliated with any churches or organizations on his Form I-687.

These inconsistencies noted are material to the applicant's claim in that they have 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*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence 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.