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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

FILE:

[REDACTED]
MSC-06-046-11751

Office: NEW YORK

Date:

JUN 01 2009

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:

SELF-REPRESENTED

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 "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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was not credible and not amenable to verification, and thus was insufficient to establish the applicant's eligibility.

On appeal, the applicant contends that the evidence submitted is credible to support his claim of continuous residence in the United States since before January 1, 1982 and throughout the requisite period. The applicant also submits two additional letters and an affidavit on appeal.

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 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.

The sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

To show that he has resided in the United States continuously throughout the requisite period the applicant provided numerous documents including photocopies of various receipts, a photocopy of an envelope with a stamp and postmark addressed to the applicant from Bangladesh, and a photocopy of a money order made payable to Immigration and Naturalization Service. The applicant also submitted 17 witness statements from friends and various private and public organizations.

Upon review, the sworn statement from [REDACTED] will not be considered since it does not relate to the requisite period. The various receipts submitted do not have any address or other identification to verify whether they belong to the applicant. Further, these receipts do not show when or to whom they were issued. The handwritten dates and descriptions on the receipts are illegible to read.¹ Thus, they have no probative value as evidence of the applicant's residence in the United States during the requisite period. The postmark date on the envelope and the date when the money order was issued are indiscernible. They also are not probative as evidence of the applicant's residence or presence in the United States during the requisite period.

¹ The director indicated on the receipt from [REDACTED] that the tax amount was wrong for 1982 in New York City, New York and that the area code of the company's telephone number did not exist before September 1, 1984.

[REDACTED] in his letter states that he examined the applicant on March 5, 1982. The letter lacks probative value as [REDACTED] fails to describe with sufficient detail how he dates the applicant's visit to his office on March 5, 1982. Further, no contemporaneous documents such as the applicant's medical records, receipts, or other supporting documents have been submitted to substantiate [REDACTED] statement. The letter, by itself, has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

[REDACTED] the Assistant Secretary of Islamic Council of America Inc., states in his October 1, 1987 affidavit that he has known the applicant since October 1981 and that the applicant left the United States from July 15, 1987 to August 25, 1987. [REDACTED] of Islamic Council of America Inc. indicates in his May 16, 2006 affidavit that when he was the Moslem priest at Madina Masjid (mosque) between 1982 and 1986, he regularly saw the applicant praying every Friday and attending various Moslem celebrations. Their sworn statements lack probative value since both [REDACTED] and [REDACTED] fail to provide specific information about the applicant's membership in the organization as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, both affiants fail to include the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during membership period, the events and circumstances of how he first met the applicant and where he acquired the information relating to the applicant's membership in the organization. Further, the applicant fails to list his membership in or affiliation with this organization at part #31 of his current Form I-687.

Similarly, the two letters from Bangladesh Society, Inc., New York lack probative value because the authors fail to include specific information as prescribed by 8 C.F.R. § 245a.2(d)(3)(v). The applicant did not list Bangladesh Society Inc., New York at part #31 of his current Form I-687 or part #34 of his previous Form I-687. Further weakening the probative value of these letters are the inconsistent statements from the two authors who wrote the letters. The April 12, 2007 letter states that the applicant, according to the organization record, has become an active member since 1981. This statement is inconsistent with the January 25, 1993 letter in which the author states that the applicant has been a member since July 1983.

the general secretary of Bangladesh American Educational and Cultural Society of North America, Inc., states in his affidavit that the applicant has been an active participant since the inception of the organization but does not indicate exactly when the organization was initially organized. Nor does he offer specific information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). The applicant additionally fails to mention his affiliation with or membership in this organization on either Form I-687. The affidavit has minimal weight as evidence of the applicant's residence in the United States throughout the requisite period.

the manager of G.M. Construction & Waterproofing Corp., states in his affidavit that the applicant worked as a construction worker at his company from August 1985 to July 1989. This affidavit, however, is not probative as evidence of the applicant's continuous

residence in the United States during the requisite period because it does not contain specific information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i) concerning past employment records. Specifically, the affidavit fails to provide the applicant's address at the time of his employment, the exact period of the applicant's employment, the description of the applicant's duties with the company, the employment records from which the information was taken, and the place where such records are located and whether United States Citizenship and Immigration Service (USCIS) may have access to the records.

The remaining eight affiants generally state that they have known the applicant since 1981. Some claim the applicant is their good friend; others indicate they know where he has been residing since 1981; however none describes with sufficient detail how he or she first met the applicant, how often he or she met and talked with the applicant during the requisite period, or whether he or she has direct personal knowledge of where the applicant resided and worked in the United States during the entire requisite period. Simply listing the addresses at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life and work in the United States during the requisite period does not establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period. 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. Because these affidavits lack relevant detail, they have only minimal weight as evidence of the applicant's residence in the United States throughout the requisite period. Considered individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record 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 lack of credible supporting documentation, it is concluded that the applicant 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.