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

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: JUN 02 2009

MSC 06 053 14522

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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, New York, and 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 determined 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has submitted sufficient documentation that clearly establishes his continuous residence in the United States during the requisite period. The applicant asserts that the director's findings are merely based on surmises and conjectures which is not a legal basis to deny his application.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record reflects that on December 23, 1996, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his second spouse, [redacted] Accompanying the Form I-130, is a Form I-485 application[2] and a Form G-325A, Biographic Information, signed by the applicant on December 4, 1996. The applicant indicated on his Form G-325A that he resided in his native country from birth until January 1992. On the Form I-485 application, the applicant indicated that he had three children born in Pakistan and listed their dates of birth as November 20, 1985, October 15, 1987, and November 10, 1991.

The record also reflects that on December 7, 2001, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his third spouse, [redacted] Accompanying the

[1] The Form I-130 indicates that the applicant was previously married to [redacted] from 1987 to May 1992.

[2] The Form I-485 application based on the filing of the Form I-130 was denied on July 17, 1999.

Form I-130, is a Form I-485 application signed by the applicant on August 5, 2001.[3] The applicant did not list his children on this Form I-485 application.

On his Form I-687 application, the applicant listed one absence from the United States during the requisite period; April 1987 to May 1987.

At the time the applicant filed his Form I-687 application, he provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated December 16, 2005, the applicant, in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, submitted:

- A two-year lease agreement entered into on November 10, 1981 between the applicant and [redacted] for premises at [redacted]
- A letter dated April 20, 1982, from a representative of Hotel Howard in New York City, regarding a disputed bill.
- A letter dated July 6, 1988, from a medical doctor in Elmhurst, New York, who indicated that the applicant has been his patient since January 1985.
- A letter dated April 2, 1982, from a representative of the New York Telephone (a NYNEX Company) regarding a new telephone connection.
- A letter dated December 18, 1985, from the president of Standard Die and Took Works in Brooklyn, New York, who attested to the applicant's employment as a laborer from February 1984 to December 1985.
- A letter dated January 18, 1984, from [redacted] stock manager of Empire Footcare, Co., in New York City, who attested to the applicant's employment as a stock helper from December 1981 to January 1984.
- A letter dated July 27, 1988, from [redacted] sales manager of Jewelrama Inc., in Astoria, New York, who attested to the applicant's employment as a sales person from January 1986 to July 1988.
- An invitation for an Akila ceremony on November 6, 1987.
- A wedding invitation for July 7, 1984.

The director, in denying the application, noted that the applicant had failed to provide evidence of his entry with a B-2 visa in 1981 as well as evidence of his departure and re-entry into the United States in 1987. The director noted several inconsistencies between the applicant's applications, testimony and supporting documents. Specifically:

1. The letter dated April 2, 1982 from the New York Telephone Company (Nynex Company) is fraudulent as the company, Nynex Company, was not incorporated until 1984.

[3] The Form I-485 application based on the filing of the Form I-130 was denied on October 30, 2003.

2. The applicant indicated that he had three children born in Pakistan in 1989, 1990, and 1992. However, Service records reflect that the children's dates of birth as November 20, 1985, October 15, 1987, and November 10, 1991.
3. The Form G-325A signed December 4, 1996, indicates the applicant was residing in his native country, Pakistan from birth (April 1, 1960) to January 1992.

The director determined that based on these contradictions and inconsistencies, the applicant had failed to meet his burden of proof of establishing his eligibility for adjustment of status.

In regards to the letter from the Nynex Company, the applicant, on appeal, asserts, "it is not true that Nynex Company only came into existence in 1984. The company in various shapes has been existence since about 1960 or even earlier. Before it was simply called "Nynex" which in 1984 was changed and an epithet New York Telephone was added to it."

The applicant, however, has not submitted any credible evidence to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The New York Telephone Company was founded in 1896 and was a subsidiary of AT&T until the AT&T breakup in 1984. NYNEX was formed from the New York Telephone Company and New England Telephone and Telegraph Company.[4]

In regards to his entry into the United States with a B-2 visa in 1981, the applicant asserts that the interviewing officer misunderstood his statement. The applicant claims that with the help of a broker he was able to manage his entry into the United States with a B-2 visa belonging to someone else.

In regards to his children's dates of birth on the Form I-687 application, and the information on the Form G-325A, the applicant asserts that the information listed is incorrect. The applicant asserts, "it is a topographically [sic] mistake that was committed by the person who prepared those forms." The statements, however, provided by the applicant are insufficient to meet his burden of proof. The Form I-485 application does not reflect that anyone other than the applicant completed the application, as no information is listed in part 4 of the application; part 4 of the application requests the name, address and signature of the person preparing the form. The applicant, in affixing his signature on the Form G-325A and Form I-485 application, certified that the information he provided was *true* and *correct*.

These factors raise serious questions regarding the authenticity of the supporting documents submitted with the Form I-687 application and tend to establish that the applicant utilized the lease agreement, invitations and letters in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States during the requisite period. The Form G-325A

[4] *See* www.fundinguniverse.com/company-histories/NYNEX-Corporation-Company.

undermines the credibility of the applicant's claim to have *continuously* resided in the United States during the period in question.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, absence of competent objective evidence resolving the inconsistencies and contradictions in the record, it is determined that the applicant has not met his burden of proof. The applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A(a)(2) of the Act. 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.