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FILE:



Office: NEW YORK CITY

Date:

JUN 22 2009

MSC 05 251 15166

IN RE:



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.

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

The applicant, a native of Bangladesh who claims to have lived in the United States since December 1981, 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 on June 8, 2005. 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 and was continuously physically present in the United States for the duration of the requisite periods.

On appeal counsel asserts that the applicant has submitted sufficient credible documentation to establish that he meets the continuous residence requirement for the duration of the requisite period for legalization.

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. 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 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. 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, 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 AAO notes that although the applicant claimed that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period for legalization, other documentation in the record indicates otherwise. For example, the applicant completed a Form G-325A (Biographic Information) on April 11, 2002, which the applicant submitted with a Form I-485 he filed on April 22, 2002. On the Form G-325A, the applicant indicated that his last address outside the United States of more than one year was [REDACTED] Bangladesh, from November 1968 (the month and year of birth) to September 1986.

On the Form for Determination of Class Membership in *CSS v. Thornburgh (MEESE)*, which the applicant completed on November 2, 1992, the applicant indicated that he first entered the United States in December 1981, that he last departed the United States on September 1, 1986

for a trip to Mexico and returned to the United States on September 11, 1986. On the Form I-687 dated November 2, 1992, the applicant indicated that he last came to the United States September 1986. The applicant indicated one absence from the United States during the 1980s – a trip to Mexico lasting from September 1, 1986 to September 11, 1986. The applicant indicated the following as his employment history in the United States during the requisite period:

- Shah Bagh Restaurant/N.Y., waiter, from January 1983 to September 1985;
- Agricultural Firm/Florida, helper, from November 1, 1985 to November 20, 1985;
- Studying English, student from January 1986 to December 1987; and
- Self-employed, from January 1988 to December 1988.

On the Form I-687 the applicant filed on June 8, 2005, the applicant listed the following as his employment history in the United States during the requisite period:

- Self-Employed in New York, daily helper, from February 1982 to December 1982;
- Shah Bagh Indian Restaurant, New York, dishwasher/wet staff, from 1983 to September 1985;
- Big Apple Construction Company, Brooklyn, New York, construction helper, from October 1985 to December 1988;
- Farm Job, Florida, from November 1985 to December 1985; and
- Student in New York, from 1986 to 1987.

The applicant provided contradictory information about his initial entry into the United States and his continuous residence in the country during the requisite period. The contradictory information casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. It is noted that the applicant was about 13 years old at the time he claimed to have entered the United States in 1981. The applicant did not provide a piece of primary evidence such as school records or medical records which is expected of a child his age. Additionally, the applicant did not submit any documentation and the record does not reflect any objective evidence pointing to when the applicant first entered the United States

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. The AAO determines that he has not.

The applicant has submitted four photocopied air mail envelopes addressed to the applicant in care of [REDACTED] in Woodside, New York, from individuals in Bangladesh with postmark dates during the requisite period for legalization. The postmarks appear to be dated July 11, 1985, October 3, 1987, July 11, 1985, December 3, 1987 and one with illegible postmark date. The envelopes do not bear a United States Postal Service mark to show that the envelopes were received and processed in the United States before delivery to the applicant's address. There is no original in the file for verification. None of the envelopes date to before January 1, 1982. Thus, the envelopes have little probative value as evidence of the applicant's continuous residence in the United States for the requisite period.

The other document in the record with a date from the 1980s is a photocopied merchandise receipt from Sajra Distributors for a 3 piece dining set, identifying the applicant as the customer and his address as [REDACTED]. This document lacks credibility. A photocopied document can easily be forged and there is no original in the file for verification. The receipt has handwritten notation of the applicant's name and address with no date stamp to authenticate the date it was written. It is highly unlikely that a child of 14 years old would have ordered and paid for a 3 piece dining set. Thus, the photocopied receipt is suspect and has little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The record include letters from two businesses dated 1987 and 1988 – Shah Bagh Indian Restaurant in New York City and Big Apple Construction Company in Brooklyn, New York – stating that the applicant was employed at the former company from January 1983 to September 1985 as a waiter, and at the latter company from October 1985 to January 1989, as a part-time painter and was paid in cash. These employment letters do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records; and did not indicate the location of such records and whether they are available to review. Nor are the letters accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed during any of the years in question. In addition, the letter from Big Apple Construction Company is inconsistent with the employers listed by the applicant on the Form I-687 dated in 1992. The applicant did not indicate Big Apple Construction Company as one of his employers in the United States during the 1980s. For the reasons discussed above, the employment letters have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States during the years 1981 to 1988.

The record also includes (1) two letters from Bangladesh Society Inc., New York, dated January 3, 2004 and May 10, 2005. The January 2004 letter was signed by [REDACTED], the secretary to the society stating that the applicant was "acquainted" to the organization since he came to the country and used to visit the office now and then. The May 2005 letter was signed by [REDACTED], general secretary to the society stating that the applicant was personally known to him since 22 years, that he was one of the active members of the society and had volunteered in many cultural and ceremonial events since 1982; and (2) a letter from [REDACTED]

Masjid & Islamic Center, Inc. dated May 16, 1993 and signed by the secretary and the president (names of the signatories not legible). The letter stated that the applicant had contributed towards the development of the Islamic Center since August 1985.

The regulations at 8 C.F.R. § 245a.2(d)(3)(v) specify 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. None of the letters cited above showed the applicant's dates of membership, two did not even indicate if the applicant was a member of the organization, none indicated where the applicant lived during period of his association with the organizations, the letters are vague about how the authors knew the applicant, and whether their information about the applicant was based on personal knowledge, organizational 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), and none claimed to have known the applicant before January 1, 1982, the AAO concludes that the documents have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

The letter from [REDACTED] dated May 10, 1987, with handwritten notations attesting to the applicant's visits to his office from January 13, 1982 onwards, is not supplemented by any medical records or other hospital documents showing that the applicant was seen at the times indicated, and does not indicate the nature of the visits. Furthermore, the letter only attested to the applicant's visits in 1981 and 1982, but offered no information beyond 1982. In view of these substantive shortcomings, the letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of notarized letters and affidavits – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, a photocopied letter from [REDACTED] with handwritten notations attesting that the applicant was examined by him from January 13, 1982 onwards through May 10, 1987, and a photocopied letter from The Language Lab in New York City, stating that the applicant was a student of the center from March 1983 through September 1984, is suspect and not credible. For example, the notarized letters and affidavits have minimalist or fill-in-the-blank formats with virtually identical wordings and very little input by the authors. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the authors provided remarkably few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interactions with him during the 1980s. The notarized letters and affidavits are not accompanied by

any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the notarized letters and affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Thus, it must be concluded that the applicant has failed to establish his continuous residence in the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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.