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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUN 30 2009

MSC 06 080 10821
[redacted] [consolidated]

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:

[redacted]

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, counsel asserts that the applicant has submitted sufficient evidence establishing continuous residence in the United States during the requisite period. Counsel asserts that the immigration officer made errors in considering all the documents submitted.

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 a Form I-140, Immigration Petition for Alien Worker, was filed on behalf of the applicant on June 3, 2002.[1] On August 30, 2002, a Form I-485, Application to Register Permanent Residence or Adjust Status,[2] was filed by the applicant along with a Form G-325A, Biographic Information, signed August 13, 2002. On the Form G-325A, the applicant indicated that he resided in his native country, Bangladesh, from October 1970 to October 1997.

[1] The petition was denied by the Director, Vermont Service Center, on March 14, 2003, and the subsequent appeal was dismissed by the AAO on February 22, 2005.

[2] The Form I-485 application was denied by the Director, Vermont Service Center, on July 28, 2003.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted:

- An affidavit from [redacted], who indicated that the applicant resided with him at [redacted] New York from February 20, 1988 to October 1997.
- An undated letter from [redacted]., in Brooklyn, New York, which attested to the applicant's employment as a construction helper from March 1988 to December 1992.
- An affidavit from [redacted], who indicted that he has known the applicant since 1982 and first met the applicant in Atlantic City.

The applicant also submitted affidavits from several affiants; however, the affidavits are silent as to the date the affiants met the applicant.

On September 11, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that he had failed to submit evidence of his July 7, 1981 entry. The applicant was advised of the information indicated on the Form G-325A and that the form strongly suggested that he did not enter the United States prior to January 1, 1982. The applicant was advised that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits and the affidavits did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was also advised that he was only 11 years of age at the time he alleged to have entered the United States, but provided no evidence of an adult responsible for his care and financial support.

Counsel, in response, indicated that the applicant has been in the United States since before January 1982 and that the affidavits submitted were bona fide and genuine and the affiants were willing and able to confirm their statements. Counsel asserted, "[e]ach affiant submitted his or her ID along with their respective affidavits." Counsel asserted that no Bengali translator was provided at the time of the applicant's interview and that during said interview, the applicant was very nervous and confused, "which led to her [sic] making few erroneous statements."

The director, in denying the application, noted that the applicant did not request an interpreter at any time during his interview. The director determined that the applicant had not established by a preponderance of the evidence that he resided in the United States prior to January 1, 1982.

The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment letter failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the letter also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant indicated that he arrived in the United States in July 1981 with his parents and resided with his uncle, [redacted] at [redacted] Brooklyn, New York. The applicant asserted his uncle took care of him and his parents. The applicant, however, provides no evidence from either his parents or uncle to corroborate his statement. 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 evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements provided do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

The applicant has not addressed the director's finding regarding his Form G-325A, which reflects that he was residing in his Bangladesh during the requisite period. This fact raises serious questions regarding the authenticity of the supporting documents submitted with the Form I-687 application and tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. The Form G-325A undermines the credibility of the applicant's claim to have continuously resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through the date he attempted to file his application.. 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