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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE

Date:

MAY 27 2009

MSC 04 307 11188

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:



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, Baltimore. 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 provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period. The director also determined that the applicant disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

On appeal, counsel states that the applicant has demonstrated his continuous presence in the United States.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing 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 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant’s original Form I-94, Departure Record, indicates that the applicant was admitted into the United States as a B-2, visitor for pleasure, on November 12, 1974 at New York, New York, until December 11, 1974. His Form I-94 also indicates that the applicant received two extensions of stay, the last extension being valid until February 11, 1975 and that his change of status to an F-1, student, was denied on March 19, 1976. His Form I-94 shows he was given until April 19, 1976 to leave the United States voluntarily. The applicant claims on his Form I-687 application that he did not leave the United States until March 1987 to visit his family in Pakistan.

The record contains another original Form I-94 showing that the applicant re-entered the United States as a B-1, visitor for business, on April 3, 1987 at New York, New York. It was upon his return from Pakistan, that the applicant claims he tried to file his legalization application under the CSS/LULAC settlement agreement and was told that his application could not be accepted because he was out of the country. This Form I-94 reveals that an extension of stay was denied and the applicant was given until August 3, 1987 to leave voluntarily from the United States. The applicant

claims on his Form I-687 application that he had no other absences from the United States after his return on April 3, 1987.

The applicant submitted four letters to establish his initial entry and residence in the United States during the requisite period. The letter from [REDACTED] states that he has known the applicant since 1974 and that he had been working for his car service company since 1990. [REDACTED], who resides in Edison, New Jersey, states in his letter that he has known the applicant from the early 1980's and that the applicant used to visit him from Brooklyn, New York, on a regular basis. The letters provide no other information about the applicant.

The letter signed by [REDACTED] states that he has known the applicant since 1987 and that the applicant stayed with him from 1987 through 1994 at his previous address [REDACTED] Jamaica, New York. The letter provides no other information about the applicant. [REDACTED] states in his letter that he has known the applicant since 1974 and that the applicant resided with him from 1980 through 1987 at his previous address [REDACTED], Brooklyn, New York, and at his present address [REDACTED], Brooklyn, New York. However, the applicant never claims to have resided at [REDACTED], Brooklyn, New York on his Form I-687 application. The letters provide no other information about the applicant.

Form G-325, filed in conjunction with Form I-130, Petition for Alien Relative, and signed by the applicant indicates that the applicant resided in [REDACTED] Pakistan from 1985 to 1987. This evidence directly contradicts the statements of [REDACTED] and [REDACTED] who claimed that the applicant resided at addresses in the United States during 1985 – 1987.

The inconsistencies in the evidence provided regarding the applicant's continuous residence are material to the applicant's claim in that they have a direct bearing on the length of time the applicant actually resided in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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's remaining evidence consists of one bank statement dated June 30, 1987, one envelope postmarked July 9, 1987, a deposit slip dated May 6, 1987, two checks from his previous employer, Annie Stationary Store, dated February 4, 1983 and July 5, 1984, and copies of motor vehicle applications dated 1975 and 1976. Considering all the evidence of record, the AAO finds that the applicant has established that he probably resided in the United States for some part of the requisite period. However, given the lack of detail in the letters and the inconsistencies regarding the applicant's continuous residence, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of

continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's continuous residence in the United States in an unlawful status since such date and through the requisite period.

This application cannot be approved for another reason. The record establishes that the applicant disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish for due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

The applicant's Form G-325, filed in conjunction with Form I-130, Petition for Alien Relative, that was signed by the applicant, indicates that the applicant resided in [REDACTED] Karachi, Pakistan from 1985 to 1987. The record contains a copy of the applicant's nonimmigrant visa issued at Karachi on March 30, 1987. The applicant's apparent absence from the United States from 1985 to April 3, 1987 establishes a break in his period of continuous residence in the United States during the requisite period. No explanation and evidence has been provided to show that the applicant resided continuously in the United States throughout the requisite period. For this additional reason, the application may not be approved.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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*. Further, the applicant disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.