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FILE: [REDACTED] Office: CHICAGO
MSC-06 084 10587
MSC-08 233 10284 – APPEAL

Date: NOV 20 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. 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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

Perry J. Rhew
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 Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India who claims to have lived in the United States since before January 1, 1982, 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 December 23, 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 for the duration of the requisite period.

On appeal the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the requisite period.

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) 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 issue in this proceeding is whether the applicant (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 AAO determines that the applicant has failed to meet his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his initial entry into the United States and his continuous residence in the country through the requisite period. At his interview on November 26, 2007, the applicant stated that he first entered the United States in November 1980. On the Form I-687 the applicant completed on December 26, 1989 and the accompanying affidavit, the applicant indicated that he first entered the United in February 1981 and resided continuously in the country through the requisite period except for two brief trips outside the United States to India, from November to December 1982 and from June 15, to August 25, 1989. The applicant indicated that he was employed by [REDACTED] Chicago, Illinois, as an assembler from March 1982 to September 1987; and by [REDACTED]

██████████ Chicago, Illinois as a painter from April 1984 to December 1986. The applicant did not provide any employment information beginning from his alleged entry date of February 1981 to March 1982, or an explanation of how he was able to take care for himself including paying rent from February 1981 to March 1982.

On the Form I-687 the applicant completed on January 7, 2003, and the current Form I-687 he filed on December 23, 2005, the applicant indicated that he resided continuously from his alleged entry in November 1980 through the requisite period except for two brief trips outside the United States to India, from November to December 1982, and from June to August 1989. The applicant indicated his employer since entry into the United States as American Airlines from March 1991. The applicant did not provide any employment information from his alleged entry in November 1980 to March 1991 or an explanation of how he was able to take care of himself including paying rent in River Forest and Woodbridge, Illinois. The applicant did not provide any objective evidence of his entry into the United States in (1980 or 1981), or his subsequent entries into the United States. The only objective evidence of the applicant's presence in the United States is his documented entry on August 25, 1989, with a non-immigrant B-2 visa.

The inconsistencies in the applicant's prior statements regarding his initial entry into the United States (1980 or 1981) and his employment history in the United States cast serious doubt on the veracity of the his claim that he has been residing in the United States from before January 1, 1982 through the requisite period.

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. *See 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.*

As noted above, the applicant has provided contradictory statements and documents in support of his application. The applicant has failed to submit any objective evidence to explain or reconcile the discrepancies. Therefore, the reliability of the remaining evidence – consisting of a series of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s – is suspect and not credible.

The record includes letters from two businesses in Chicago, Illinois – ██████████ signed by ██████████, stating that the applicant was employed as a sign assembler from March 1982 to September 1987; ██████████ (letter not signed), stating that the applicant was employed as a part-time spray painter from April 1984 to December 1986.

These employment letters do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are the letters supplemented by

any earnings statements, pay stubs, or tax records from the applicant demonstrating that he was actually employed during any of the years claimed. Additionally, the letter from [REDACTED] was not signed by any official from the company and did not specify and period of lay offs. For the reasons discussed above, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

The record includes a letter from the secretary of Muslim Community Center in Chicago, Illinois, dated December 24, 1989, stating that the applicant “regularly attends this mosque, and he is known in the community from Sep. 1983.” The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies 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. The above letter did not specify whether the applicant was a member of the mosque and the precise dates of membership; did not indicate how and when the author met the applicant, and whether his information about the applicant was based on personal knowledge, the mosque’s records, or hearsay. Since the letter did not comply with sub-parts (C), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. Additionally, the author did not provide any information about the applicant prior to September 1983 and thereafter, through the requisite period. Thus, the letter is not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through the requisite period.

Finally, the record includes a series of letters and affidavits from individuals who claim to have lived with or otherwise known the applicant in the United States during the 1980s. The letters and affidavits have minimalist formats, providing very few details about the applicant’s life in the United States and the nature and extent of their interactions with him over the years. The letters and affidavits are not accompanied by any documentary evidence of the authors’ personal relationships with the applicant in the United States during the 1980s. The authors do not appear to have direct personal knowledge of the events and circumstances of the applicant’s residency in the United States during the requisite period. Although some authors provided documents to establish their own identities, none provided documents to establish their residence in the United States during the 1980s. Additionally, the information provided by some of the affiants regarding the applicant’s address in the United States during the 1980s is in direct contradiction with the information provided by the applicant. As previously indicated, doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For all the reasons discussed above, the AAO finds that the letters and affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through 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.