

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

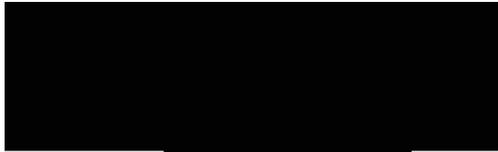


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L 1

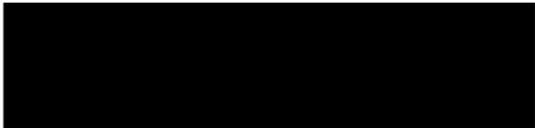


FILE: [REDACTED] Office: NEW YORK Date: OCT 14 2009
MSC-05-180-30966

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

Perry 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, 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 (together comprising the I-687 Application). The director denied the application after she found that the applicant had submitted fraudulent documentary evidence to establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

On appeal, counsel for the applicant contends that the director's finding constitutes an abuse of discretion and further claims that the applicant has submitted sufficient credible evidence to meet his burden of proof.

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)(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).

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. 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, "[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 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 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 primary issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and that he has resided continuously in the United States throughout the requisite period.

The applicant claimed during the interview that he first entered the United States without inspection on July 22, 1981. He also stated that the only time he was not in the United States during the requisite period was for 40 days from November 26, 1986 to January 9, 1987. The applicant indicated in a personal affidavit that he attempted to file the application for temporary resident status on April 26, 1988.

To show that he has resided in the United States continuously throughout the requisite period, the applicant provided numerous documents including a photocopy of a personal money order dated April 26, 1988; three photocopies of G-56 appointment letters; fourteen affidavits; and eight letters.

In reviewing the evidence submitted, the director identified two fraudulent G-56 appointment letters. The appointment letters dated May 3, 1988 and July 3, 1988 both purport to show that the applicant had a legalization interview on July 3, 1988 and September 29, 1988, respectively. The director noted that July 3, 1988 fell on a Sunday, a non-business day. Additionally, these letters, according to the director, lacked all of the standard security features of a genuine G-56 and bore a signature of an individual who was not working as a legalization officer during the time indicated on the letters.

In response to the director's notice of intent to deny (NOID) and on appeal, neither the applicant nor his counsel submits additional evidence or provides explanation to address or resolve the problems in the G-56 appointment letters as noted by the director above. The AAO finds that the director's finding materially affects the applicant's credibility and casts serious doubt on the veracity of his claim that he has resided continuously in the United States throughout the requisite period.

The applicant submitted a photocopy of a personal money order as evidence that he attempted to file the application on April 26, 1988. The AAO observes that the money order contains the applicant's name and address, but the address on the money order is not his 1988 address. This evidence will be given nominal weight.

The director also identified multiple discrepancies in many of the letters submitted. She noted that the letters from the Burger King and Hydraulic Plumbing & Heating Corp. both gave the area code "718" as part of the telephone number, but that the 718 area code was not in use at the time period when the letters were written or issued. The director also indicated that the letters from Indian Super Market, Raja Sahib Restaurant Inc., Area Plumbing Supply, and Century Builder's Co. each had either an unverifiable phone number or a registration date that was subsequent to the time period of the applicant's stated employment with those companies.

In response to the NOID and on appeal, the applicant asserted that he did work for those companies during the period indicated in each of the letters and stated that he had no knowledge why some companies were not registered when he worked there. The AAO finds that the applicant's assertion alone is not sufficient to resolve the discrepancies in the record as indicated by the director. 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 applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. Those letters purporting to attest to the applicant's residence in the United States during the requisite period will be given no evidentiary weight.

The applicant also submitted numerous affidavits from 14 individuals. The director held that none of the affidavits submitted appeared credible or amenable to verification. None of the affiants, according to the director, submitted any evidence showing that he or she resided in the United States during the period specified in his or her affidavit. Further, the director indicated that none of the affiants described with sufficient detail how he or she first met the applicant in the United States, how he or she maintained his or her relationship with the applicant, or provided other details about the applicant's life in the United States during the requisite period. The director concluded that the lack of detail in the affidavits combined with the discrepancies in the evidence of record as noted above damaged the applicant's claim that he had continuously resided in the United States since before January 1, 1982. The AAO agrees. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

states in his letter that the applicant has been an active member of Masjid Al-Abidin since 1983. However, he fails to offer specific information about the applicant's membership in the organization as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, he fails to include the inclusive date of the applicant's membership, the address or addresses where the applicant resided during his membership period, the events and circumstances of how he first met the applicant, and where he acquired the information relating to the applicant's membership in the organization. The letter is not probative as evidence of the applicant's residence during the requisite period.

The applicant claims to have continuously resided and worked in the United States since July 1981, but his claim is not substantiated by any credible evidence. He provides no pay stubs, lease agreements, utility bills, or other evidence showing that he continuously resided and was physically present in the United States during the requisite periods. Considering the evidence individually and in light of the director's findings, the AAO agrees with the director that the applicant has failed to submit credible evidence to establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

The noted discrepancies, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the lack of detail in the record seriously damage his credibility. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the discrepancies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.

Further, a review of the records shows that the applicant was arrested by border patrol agents and denied admission into the United States on February 19, 2001 as he attempted to enter the United States by using a fraudulent legal permanent resident card.¹ The AAO finds that the applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit sought. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest,"

¹ A search of the applicant's belongings on that day also resulted in finding a fraudulent social security card in his name.

pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has neither filed nor obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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