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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: [redacted] Office: DALLAS Date: SEP 03 2009

MSC-06-098-22088

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:

[redacted]

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, or *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, Dallas, Texas and is now before the Administrative Appeals Office (AAO) on appeal. This matter 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). The director determined that the applicant had not submitted a complete medical examination by a designated civil surgeon. The director noted that the applicant submitted an incomplete I-693 and an incomplete I-693 supplement with his Form I-687. The applicant also submitted an incomplete I-693 and supplement at the time of his interview. 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.

On appeal, the applicant asserts that United States Citizenship & Immigration Services (USCIS) erred in finding that the applicant failed to provide a complete medical examination. Through counsel, the applicant also asserts that the director erred in not issuing a Notice of Intent to Deny (NOID) prior to issuing the Denial of the application. Lastly, he asserts that he has established his continuous unlawful residence in the United States for the duration of the relevant 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)(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).

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.

First, the appellant asserts that the director erred in denying the application because the Form I-693 medical examination was incomplete. It is noted by the AAO that Section 245a.2(i) of the Act provides that the applicant bears the burden of submitting a medical examination by a designated civil surgeon, which must be presented to the Service at the time of interview. A review of the record reveals that the applicant submitted a Form I-693 Medical Examination form signed by [redacted] on February 17, 2003. This form was incomplete. Subsequently, the applicant submitted a Form I-693 on December 21, 2005 signed by [redacted] The form was also incomplete, however, as the physician noted that the applicant refused required immunizations. On the Form I-693, the civil surgeon noted the following, "applicant came back late to TB test check up. Refused to re-take it also he refused to take TB vaccine."

On January 12, 2007 the applicant was interviewed by USCIS in connection with his application. During that interview, the officer conducting the interview informed the applicant that his Form I-693 was incomplete. The director denied the application on August 20, 2007 noting that the applicant failed to comply with the requirements of Section 245a.2(i) of the Act. The AAO finds that the applicant failed to comply with the Section 245a.2(i) of the Act and the application was properly denied on this basis. However, the AAO notes that the applicant did submit a completed Form I-693 on September 7, 2007 subsequent to the issuance of the denial.

On appeal, the applicant also asserts that the director erred by not issuing a NOID prior to the denial. The applicant's attorney mistakenly stated that the director was required to issue a Notice of Intent to Deny (NOID) pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

Furthermore, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Following *de novo* review, the AAO finds additional grounds for denial, as explained below, beyond those cited in the Denial.

In a brief submitted to United States Citizenship and Immigration Service (USCIS) in connection with the applicant's Form I-485 application, filed with USCIS on May 9, 2002, the applicant asserts that he accepted unauthorized employment immediately upon entering the United States in 1980. *See* 8 C.F.R. § 214.1(e)(which indicates that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.). In support of this assertion he submits an employment letter signed by [redacted] of S&Z Trading, Inc. [redacted] indicates that the applicant worked for the company from October 1, 1980 until December 31, 1984.

This letter does not contain sufficient detail to be probative and credible. Furthermore, the letter fails to comply with the regulations set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements submitted by [redacted] fail to include much of the required information and can be afforded minimal weight as evidence of the applicant's employment during the period prior to January 1, 1982.

The applicant also submitted the following evidence of his continuous residence for the duration of the relevant period:

- envelopes containing postal meter markings dated 1981, 1982, 1983, 1984.

A letter from the Islamic Council of America Inc., signed by [redacted] indicating that the applicant began visiting the Center in October 1980 and that, to the declarant's knowledge, the applicant is currently in Florida. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter fails to comply with the above cited regulation because it does not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

- Affidavits from [redacted] and [redacted] who indicate that they met the applicant in 1980 and that they attended various religious functions with him. Neither affiant provides sufficient details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A letter from the applicant's landlord, containing an illegible signature, indicating that the applicant lived in the basement apartment of [redacted] since September 1, 1982. On his Form I-687, the applicant indicates that he moved to this address in October 1980. 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. This inconsistency casts doubt on the reliability of all of the evidence in the record.

Thus, the AAO finds that the applicant did not establish, by a preponderance of the evidence that he entered the United States prior to January 1, 1982 or that he remained in the United States in an unlawful status, for the duration of the relevant period. Thus, the applicant is not eligible for the benefit sought for this reason, in addition to the grounds noted by the director in the Notice of Denial.

Furthermore, the application may not be approved, because the evidence establishes that the applicant is inadmissible to the United States. Section 245A(a)(4)(A) of the Immigration & Nationality Act (the Act), 8 U.S.C. § 1255a(a)(4)(A), requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status.

The record reflects that the applicant sought through misrepresentation to procure an immigration benefit under the Act. As noted above, the applicant testified that he departed the United States in 1982 and reentered the United States one month later, using his B-2 visitor visa. He asserts that he entered without disclosing that he had violated the terms of his initial visitor visa by accepting unauthorized employment.

An alien is inadmissible if she seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Thus, the applicant is inadmissible and ineligible for legalization benefits.

Furthermore, on November 23, 1993, the applicant was ordered excluded under Section 212(a)(7)(A)(i)(I) of the Act.

Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the cited grounds of inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The AAO notes that the applicant has filed a Form I-690 Application for Waiver of Grounds of Excludability relating to the misrepresentation, and that application remains pending. However, even if the Form I-690 were approved, the application cannot be granted because the applicant has failed to meet the requirements for adjustment to temporary resident status, as explained above. Accordingly, the applicant's appeal will be dismissed.

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