



U.S. Citizenship
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FILE:



Office: ATLANTA

Date:

SEP 22 2009

MSC 05 140 10125

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, 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, Atlanta, Georgia. The decision is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be dismissed.

The applicant, a native of Pakistan who claims to have lived in the United States since May 1981, 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 February 17, 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, counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement for the duration of the requisite period. Counsel does not submit additional evidence with the appeal.

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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 statements and documents regarding his initial entry into the United States and his continuous residence in the country during the 1980s. On a prior Form I-687 the applicant filed in 1990, the applicant stated that he

first entered the United States illegally in May 1981 and that he made two trips outside the United States during the 1980s. The first trip was to Saudi Arabia from August 1985 to October 1985, and the second trip was to Pakistan from March to April 1988. The applicant did not indicate any other trips outside the United States during the 1980s.

On the Form I-687 he filed in 2005, the applicant indicated that he last entered the United States on April 25, 1988 with a B-2 visitor's visa. The applicant does not indicate any absences from the United States during the 1980s. In fact, in response to question #32 on the Form I-687, requesting applicants to list absences from the United States since first entry, the applicant indicated "N/A."

The record includes a copy of a Form I-94 (Arrival/Departure Card) showing that the applicant was admitted into the United States through Chicago, Illinois as a B-2 visitor on April 25, 1988. There is no other document in the file indicating that the applicant made prior entries into the United States. The applicant submitted a copy of a Form I-94 showing that [REDACTED] was admitted into the United States through New York City on October 20, 1986, as a B-2 visitor with legally authorization to remain in the United States until April 19, 1986. This document is of no probative value as credible evidence that the applicant entered the United States in October 20, 1985, which would have accounted for the applicant's re-entry into the United States following his first trip to Saudi Arabia as he indicated on the Form I-687 he filed in 1990. The reasons are as follow: (1) the applicant did not indicate that he was known or has used the name [REDACTED] (2) the applicant did not provide evidence of his travel outside the United States in August 1985 for which he returned in October 1985; and (3) the entry on October 20, 1985 is contrary to the information provided by the applicant on the Form I-687 he filed in 2005.

The contradictory information in the record, the absence of any objective credible evidence to establish that the applicant entered the United States in May 1981, and a copy of Form I-94 showing that the applicant was legally admitted into the United States on April 25, 1988, strongly suggest that the applicant's first entry into the United States was on April 25, 1988. The contradictions discussed above call into question the veracity of the applicant's claim that he entered the United States before January 1, 1982, and the credibility of the affidavits and other documentation attesting to the applicant's residence 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.*

The record includes an affidavit of employment from [REDACTED] owner of the Ridge Restaurant, on North Clark, Chicago, Illinois, and Duks Old Fashioned Hot Dog on an undisclosed location, dated April 20, 1990, stating that the applicant "has been working since June 1985," and that the applicant was the store manager of the restaurant. The letter of

employment does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the time of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Additionally, although [REDACTED] claims that the applicant worked at the Ridge Restaurant, the letter was written on a photocopied letter head of Duks Old Fashion Hot Dog with no contact information such as an address and telephone number. The original letter is not in the file for proper verification. For all the reasons discussed above, the employment letter has little probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

The record also includes copies of employee Statements of Earnings and Deductions from Wendy's for January, February and March 1986, and from Texwood Industries, Inc., Duncanville, Texas, for March and April 1986. The earnings statements listed above do not appear to be genuine because the applicant did not claim Wendy's or Texwood Industries, Inc. as any of his employers in the United States in 1986 or at any other time during the requisite period. As previously stated, 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.*

As discussed above, the applicant has submitted conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – a copy of telephone bill stamped paid on September 14, 1987, as well as copies of fill-in-the-blank affidavits from individuals who claim to have known the applicant in the United States during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States during 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.