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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DENVER Date: JAN 25 2010

MSC 04 363 20210

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.

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

The applicant, a native of Bangladesh who claims to have lived in the United States since July 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 November 9, 2004. The director denied the application, finding (1) 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; and (2) that the applicant is not a class member of the CSS/Newman (LULAC) lawsuits.

On appeal, the applicant asserts that the director did not properly evaluate the documentation he submitted in support of his application. In the applicant's view, the evidence in the record is sufficient to establish that he meets the continuous residence requirement for adjustment of status under section 245A of the Act.

The AAO notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Thus, the director's decision to deny the application on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO will evaluate the evidence in the record to determine whether the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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 AAO notes that the applicant, who claims to have traveled and entered the United States with his uncle in July 1981, was only 11 years old when he allegedly entered the United States. The applicant did not submit any credible documentation from his uncle to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or medical records which is reasonable to expect from a child of 11 years old residing in the United States in 1981. The applicant did not provide any reasonable explanation why he is unable to produce such documents. The applicant was 11 years old in 1981 and would have been cared for by an adult, but the applicant did not submit any credible document from his uncle or an adult guardian or provide explanation as to how he was able to care for himself during his minor years including paying for rent and contributing to household expenses during those years.

The record reflects that contrary to the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period, other documents in the record indicate otherwise. The record includes a Form I-130 (Petition for Alien Relative) filed on the applicant's behalf on January 13, 1997. On that form, the petitioner indicated that the applicant entered the United States on September 20, 1996 with a visitor's visa and was admitted into the country until March 19, 1997. On the Form G-325A (Biographic Information) the applicant completed on December 20, 1996, which he submitted with the Form I-130, the applicant indicated his last address outside the United States of more than one year as [redacted], from April 1970 (month and year of birth) until September 1996. The applicant did not indicate any employment information, rather the applicant indicated that he was a student as of December 20, 1996, when he completed the form.

Based on the applicant's own statements, it is evident that the applicant did not enter the United States prior to September 1996. The admission by the applicant casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period, as well as the credibility and reliability of the documents submitted by the applicant into evidence attesting to his continuous residence in the United States from before January 1, 1982 through the date of filing the application.

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 testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or reconcile the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence consisting of a series of affidavits – from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, letters from various religious and related groups attesting to the applicant's residence in the United States during the 1980s, as well as various receipts and envelopes – is suspect and not credible.

For instance, the affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s have minimalist or fill-in-the-blank formats with little input from the affiants. For the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants do not have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. While some of the affiants provided documents to establish their identities, none provided documents to establish that they were residing in the United States during the requisite period.

[redacted] a United States Citizen claims that the applicant resided with him at [redacted] from October 1985 to March 1986, and at [redacted], from April 1986 to March 1988. [redacted] submitted a copy of the biographic page of his United States Passport with an issue date of January 6, 1998. This record does not establish that the applicant was residing in the United States during the 1980s. Additionally, [redacted] did not provide any information about the applicant prior to October 1985. The applicant not submit any documentation such as rental agreements, rent receipts or other credible documents addressed to him at any of the addresses during the periods indicated above.

For all the reasons discussed above, the AAO finds that the 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.

The record also includes letters from various religious and related groups in the United States stating that the applicant was a member of their group during the 1980s. A review of the letters show that they all attest to the applicant's membership from early 1986. None of the organizations claim to have known the applicant before January 1, 1982. Additionally, the letters do not comport with 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 letters did not show the applicant's precise dates of membership, did not indicate where the applicant lived during the period of his association with the organizations or at any time during the 1980s, did not specify how the authors met the applicant, and whether their information about the applicant was based on personal knowledge, organizational records, or hearsay. Since the letters did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letters have little probative value. In view of the deficiencies discussed above, the letters cannot serve as credible evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

As for the envelopes addressed to the applicant at the addresses he claimed in the United States, they have illegible foreign postmark dates that appear to have been altered by hand. Therefore, it cannot be discerned when the envelopes were mailed. Additionally, the envelopes do not bear United States Postal Service date or other official markings to show that they were processed in the United States before delivery to the applicant at the addresses indicated on the envelopes. Thus, the envelopes have little probative values as credible evidence of the applicant's 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.