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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



L1

[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: MAR 03 2011

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for status as a temporary resident, 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. The decision 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 because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status throughout the relevant period.

On appeal, counsel asserts that the director failed to properly consider the evidence. Counsel states that the director did not give sufficient weight to the affidavits, and applied an improper evidentiary standard. The applicant requests a copy of the record of proceedings (ROP) under the Freedom of Information Act (FOIA) and states that he will file a brief within 30 days of receipt of the ROP. This request was processed on September 27, 2010.<sup>1</sup> The record reflects that on August 5, 2007 a previous FOIA request was closed due to the applicant's failure to comply.

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).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. The applicant did not submit any contemporaneous evidence of this nature pertaining to the requisite period.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record contains an original Form I-94 card in the applicant's name, submitted by the applicant in support of his claim that he left the United States briefly in 1987. In the Notice of Intent to Deny (NOID) issued by the director in connection with the LIFE Act application, the director indicated that the number of the stamp, 884\*[illegible final digit] was counterfeit. The director stated that the New York office of the Immigration & Naturalization Service (INS) (now United States Citizenship & Immigration Services (USCIS)) had never issued a stamp in the 8000 series, and that although it had used the stamp number 884, that number was taken out of service in 1977. The record also contains an original receipt from the U.S. Embassy in Alexandria, with a date that appears to have

been altered. The applicant submitted this receipt into the record as proof that he obtained a nonimmigrant B2 visa in Egypt in November, 1987.

The record does not contain any explanation for these anomalies noted by the director, calling into question the veracity of the remaining evidence submitted by the applicant. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the relevant period. The applicant submits affidavits in support of his eligibility.

The written statements from [REDACTED]

[REDACTED], All [REDACTED] indicate that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during some or all of the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submits a letter from [REDACTED] indicating that the applicant was examined by him on several dates beginning in December 1986 through October 1989. The doctor does not reference the source of his information and does not submit medical records. The evidence will be given nominal weight.

The applicant also submitted statements from former employers. [REDACTED] states that the applicant worked at the Family Food Center from January 1987 to December 1989. [REDACTED] state that the applicant worked at the [REDACTED] from June 1985 - December 1986. [REDACTED] states that the applicant worked for the Solti Food Centre from January 1984 - May 1985. [REDACTED] states that the applicant worked for the Reliance Travel Service Inc. from January 1981 - December 1983. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letters do not comply with this regulation, they will be given nominal weight.

The applicant also submitted a letter from [REDACTED] of the Islamic Cultural Center of New York stating that the applicant has been a member of the mosque since 1981. The applicant does not list his association with this mosque on either of the Forms I-687. 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. As the letter from [REDACTED] does not comply with any of the requirements of this regulation, it will be accorded nominal weight.

Other items of evidence include a diploma from the Translation & Interpretation Institute dated December 9, 1982 and a 1983 gas bill. The applicant's name on the gas bill appears to have been entered in a different type face than the gas bill. The diploma does not indicate the address of the institute nor the dates the applicant attended. The AAO will accord no weight to this evidence.

Although the applicant has submitted numerous letters in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the letters indicate how the author dated his or her acquaintance with the applicant, how he or she met the applicant or how frequently he or she saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the submission of counterfeit and altered evidence seriously detract from the credibility of his claim. 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 applicant's reliance upon counterfeit and altered documents and on documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

Furthermore, the record indicates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant had falsified records to establish his one month absence from and reentry into the United States in November 1987. The applicant did not deny this claim in either his rebuttal or on appeal in this application or during the appeal of his LIFE Act application. Thus, the applicant is attempting to procure an immigration benefit by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, “in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” The applicant has filed a waiver of the grounds of inadmissibility which remains pending. However, even if granted, the applicant would not be eligible for legalization benefits for the reasons noted.

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.