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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 238 12932

Office: NEW YORK

Date: JUN 27 2008

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 District 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. The director determined 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. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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). Also, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant supplemented his statements with the following evidence: Affidavits -

and Employer Statements -

; and For the reasons hereinafter discussed, the evidence does not establish the applicant's unlawful presence in the United States during the requisite time period. The applicant has failed to meet his burden of proof.

Affidavits

- July 21, 2006

The affiant submitted an unsworn notarized statement indicating that he personally knows the applicant and met him upon arrival in the United States in November of 1981. The affiant states that the applicant was looking for employment and found employment in a restaurant, and that the applicant had worked in the construction industry since 1985. The affiant states that the applicant has maintained a relationship with him, that the applicant went to Canada to visit a friend in June of 1987, returning to the United States in July of 1987. The affiant lists four addresses for the applicant between 1981 and the date of the affidavit.

- [REDACTED] - December 10, 1992

The affiant submits an unsworn notarized statement on a photocopied letterhead of the Islamic Council of America, Inc., stating that he has personally known the applicant since 1981 when the applicant would come to a mosque for prayer and other religious occasions.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), with regard to written attestations by churches, unions, or other organizations states that such attestations to the applicant's residence:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The statement issued by [REDACTED] does not comply with these regulatory requirements. The statement submitted complies with (A) and (E) above, and only marginally with (F) due to a lack of detail establishing the relationship between the applicant and statement author. The statement does not comply with any of the remaining regulatory requirements for written residence attestations for such organizations.

- November 25, 1992

The affiant submits an unsworn notarized statement on a photocopied letterhead of the Bangladesh Society, Inc., New York stating that the applicant has been a long-standing member of that organization, and that he regularly participates in various activities.

The statement issued by [REDACTED] does not comply with the above cited regulatory requirements for written residency attestations from churches, unions or other organizations. The statement submitted complies with (A) above in that it identifies the applicant by name. The statement does not comply with any of the remaining regulatory requirements for written residence attestations for such organizations.

- [REDACTED] - May 18, 2005

The affiant submits a sworn statement indicating that he is the leaseholder of apartment 1D at [REDACTED] Brooklyn, NY, and that the applicant resided with him at that address from January of 2001 till the date of the affidavit. This affidavit is not relevant to the periods of residence and presence pertinent to the application. Therefore, it will not be further discussed.

- [REDACTED] - March 8, 2005

The affiant submits a sworn statement indicating that he is a permanent resident of the United States and that the applicant resided with him as a roommate at [REDACTED] Brooklyn, NY 11218 from March of 1993 to December of 2000. This affidavit is not relevant to the periods of residence and presence pertinent to the application. Therefore, it will not be further discussed.

- [REDACTED] - November 8, 1992

The affiant submits a sworn statement indicating that he is a permanent resident of the United States and that the applicant resided with him as a roommate at [REDACTED] Brooklyn, NY 11238 from August of 1987 to the date of the affidavit (November 8, 1992). The affidavit, however, is not deemed probative. To be considered probative, affidavits and related proof 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. The affidavit must contain sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts asserted.

- [REDACTED] - November 5, 1992

The affiant submits an unsworn statement indicating that he is a United States citizen, and that the applicant resided with him as a roommate at [REDACTED], Brooklyn, NY 11208 from November of 1981 until May of 1987. The affidavit, however, is not deemed probative. To be considered probative, affidavits and related proof 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. The affidavit must contain sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts asserted.

Applicant's Sworn Statement

- The applicant provided a sworn statement whereby he indicates that: he is a citizen of Bangladesh; he entered the United States without inspection on November 21, 1981 through Florida from Bahamas; he has continuously and unlawfully resided in the United States since November 21, 1981, except for a brief period from June 6, 1987 to July 1, 1987; and he was prevented from filing a legalization application by an immigration officer because of his travel outside the United States without parole in 1987.

Employment Letters

- The applicant submitted an unsworn notarized employment letter dated December 10, 1992 from [REDACTED]. [REDACTED], the owner of the business, states that the applicant was employed by his company from August of 1987 through the date of the notarized statement as a painter earning \$7.00 per hour.
- The applicant submitted an unsworn notarized employment letter dated December 15, 1992 from [REDACTED] states that the applicant was employed by him as a painter from March of 1985 until May of 1987 earning \$5.00 per hour.
- The applicant submitted an unsworn notarized employment letter dated November 22, 1992 from [REDACTED]. The affiant, [REDACTED], stated that the applicant worked in the restaurant as a dishwasher from November of 1981 until December of 1984.
- The applicant submitted an unsworn notarized employment letter dated March 10, 2005 from [REDACTED]. [REDACTED] stated that the applicant worked for him as a construction worker from March of 1995 through the date of the notarized statement as a construction worker.

None of the employment letters provided the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to declare whether the information was taken from company records, 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.

Although the applicant has submitted several affidavits and his sworn statement 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 documents with minimal probative

value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, 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.

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