



U.S. Citizenship
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Services

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FILE:

MSC-05-223-10153

Office: NEWARK

Date:

NOV 26 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:



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 "John F. Grissom".

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, 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 of the Newark office. 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.

On appeal, counsel for the applicant states that the applicant provided substantial and ample documentary evidence in support of his claim. Counsel states that the director erred in evaluating the evidence and finding that the applicant has not established his claim. Counsel states that the interviewing officer made an assumption regarding the birth of the applicant's children, and that the applicant asserts that his wife came to the United States, conceived, and gave birth in Bangladesh.

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).

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 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.

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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 11, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following Paterson, New Jersey addresses during the requisite period: [REDACTED] from October 1981 to September 1985; and [REDACTED] Avenue, from November 1985 to October 1989. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Dishwasher for Taj Restaurant from December 1981 to July 1984; and dishwasher for Bonfire Restaurant Inc. from September 1985 to August 1989.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of receipts, affidavits of relationship written by friends and family, affidavits of employment, and attestations regarding his religious affiliations.

The applicant provided receipts listing his name from ██████████ in New York, dated March 17, 1982; and from ██████████, dated December 10, 1981. Since the receipts fail to list the applicant's address, they merely constitute some evidence that the applicant was present in the United States on the dates on which they were issued.

The applicant provided a letter from the Office of the Superintendent of Police, ██████████ ██████████ which states that the applicant arrived in Sylhet from New York on April 8, 1985. This document merely constitutes some evidence that the applicant was present in the United States immediately prior to April 8, 1985.

The affidavit from ██████████ dated April 20, 1991 fails to state that the applicant resided in the United States during the requisite period. Therefore, it will be given no weight in determining whether the applicant has established his residence in the United States during the requisite period.

Another affidavit from ██████████ dated January 24, 2001 states that the applicant came to the affiant's home in New Jersey in December 1987. The affiant indicated that the applicant is his cousin. This affidavit merely constitutes some evidence of the applicant's presence in the United States in December 1987.

The affidavit from ██████████ dated May 23, 2006 states that the affiant is the applicant's cousin and he has known the applicant since 1981. The affiant stated that the applicant lived with him at the ██████████ address from October 1981 to September 1985. The applicant lived at a different address in Paterson, New Jersey from September 1985 to the present time. This affidavit lacks detail regarding the nature and frequency of the affiant's contact with the applicant between September 1985 and the end of the requisite period, and how the affiant is able to date the applicant's residence in the United States. However, it constitutes some evidence of the applicant's residence in the United States from October 1981 to September 1985.

The affidavit from ██████████ dated October 2006 states that the applicant is one of the affiant's close friends and he resided at the affiant's address at ██████████ from November 1981 to September 1985. In October 1985 the applicant moved to the ██████████ address. This declaration conflicts with the January 24, 2001 and May 23, 2006 affidavits in that it fails to indicate that the applicant is the affiant's cousin. In addition, it lacks detail regarding how and when the affiant met the applicant, how they came to be living together, how the applicant dates the applicant's residence in the United States, and the nature and frequency of their contact from October 1985 through the end of the requisite period. Considering these limitations, this declaration will be given only nominal weight.

The affidavit from [REDACTED] states that [REDACTED] as the applicant's personal physician from 1981 to 1989. This affidavit lacks detail regarding the applicant's address during the requisite period, the frequency of the affiant's contact with the applicant, whether the affiant has medical records for the applicant and, if so, whether CIS may have access to the records. The affidavits from [REDACTED] state that the applicant lived with the affiants at addresses and during times that are consistent with the information provided on the applicant's Form I-687. These affidavits lack detail regarding when, where and how the affiant met the applicant, and how they came to be living together. The affidavit dated April 8, 2002 from [REDACTED] confirms the applicant's addresses as listed in the Form I-687 application and indicates that the applicant is the affiant's good friend. This affidavit lacks detail regarding when and how the affiant met the applicant, the nature and frequency of their contact, and how the affiant dates the applicant's residence in the United States. The affidavit dated April 8, 2002 from [REDACTED] confirms the applicant's addresses as listed in the Form I-687 application, indicates that the applicant is the affiant's friend, and states that the affiant meets with the applicant every week or two. This affidavit lacks detail regarding when and how the affiant met the applicant and how he dates the applicant's residence in the United States. As a result of these deficiencies, each affidavit will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

An additional affidavit from [REDACTED] May 26, 2006, states that the affiant is the applicant's friend and has known him since 1981. The affiant stated that he met the applicant at residence at the [REDACTED] address. He stated that the applicant has been living in Paterson at a different address from 1981 to present. This is inconsistent with the applicant's Form I-687 where he indicated that he lived at the [REDACTED] from October 1981 until September 1985, rather than at a different address since 1981. This affidavit also lacks detail regarding how the affiant dates his acquaintance with the applicant, and the nature and frequency of their contact during the requisite period. Therefore, it will be given only nominal weight.

The applicant provided a second affidavit from [REDACTED] dated June 1, 2006. This affidavit states that the applicant is the affiant's friend and they have known each other since 1981. They met at a wedding ceremony in Paterson, New Jersey. The affiant stated that the applicant has been living in Paterson at different addresses since that time. He stated that he meets with the applicant two to three times per week, sometimes in the mosque and sometimes at stores. The applicant submitted an affidavit from [REDACTED] dated May 30, 2006. This affidavit states that the affiant is the applicant's friend and has known him since 1981. They met at their mosque in Paterson, New Jersey, and from 1981 to the present the applicant has been living in Paterson, New Jersey at different addresses. The affiant met with the applicant two to three times per week, sometimes in the mosque and sometimes at stores. The applicant also provided an affidavit dated June 2, 2006 from [REDACTED]. This affidavit states that the affiant is a friend of the applicant and met him at their mosque in Paterson, New Jersey in 1981. The applicant also provided an affidavit dated April 9, 2002 from [REDACTED] which states that the affiant has been a good friend of the applicant since 1975, they have been living in the same state since

1985, and they associate in the same organizations and pray in the same mosque. These affidavits are inconsistent with the applicant's Form I-687, where he failed to list any mosques when asked to list all affiliations or associations. These inconsistencies cast doubt on the affiants' ability to confirm the applicant's residence in the United States during the requisite period.

The declaration from [REDACTED] general secretary of the Bangladesh Association of New Jersey, Inc. (BANJ), indicates that the applicant has been a member of BANJ since 1987. This declaration is inconsistent with the applicant's Form I-687, where he failed to indicate that he was a member of any associations when asked to provide this information. In addition, this declaration fails to conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. Due to these deficiencies, this affidavit will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The affidavits from [REDACTED] of Taj Restaurant and from [REDACTED] of Bonfire Restaurant, Inc. state that the applicant was employed by the restaurants for periods that are consistent with the information provided on his Form I-687 application. These affidavits do not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavits fail to provide the location of the official company records from which the affidavit information was obtained. Despite this limitation, these affidavits constitute some evidence that the applicant resided in the United States from December 1981 to July 1984 and from September 1985 to August 1989.

The affidavit dated February 11, 2006 from [REDACTED] states that the applicant is the affiant's cousin and has been living in America for about 26 years. The applicant came to Bangladesh for a few weeks in April 1985 and got married. This affidavit lacks detail regarding the origins of the affiant's knowledge of the applicant's residence in the United States and the nature and frequency of their contact during the requisite period. The affidavit from [REDACTED] states that the affiant is a relative and neighbor to the applicant's wife. The affiant stated that the applicant's wife went to meet him in the United States in 1985. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period at any other time than during 1985. In addition, it lacks detail regarding the origins of the affiant's knowledge of the applicant's residence in the United States and the nature and frequency of their contact during the requisite period. The affidavit from [REDACTED] states that the applicant's wife went to the United States to meet with the applicant in December 1988. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period. In addition, it lacks detail regarding the origins of the affiant's knowledge of the applicant's residence in the United States and the nature and frequency of their contact during the requisite period. As a result of these deficiencies, each affidavit will be given only nominal weight in

determining whether the applicant has established that he resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the affiant took the applicant to the airport in April 1985 to see him off on his flight to Bangladesh and was present at the airport when he returned from Bangladesh on May 12, 1985. This affidavit fails to confirm that the applicant resided in the United States during the requisite period. Rather, it tends to show that the applicant was present in the United States in April and May 1985.

The applicant provided affidavits from his father, [REDACTED] dated October 29, 2006 and November 16, 2006. The affidavits fail to state that the applicant resided in the United States during the requisite period. Therefore, they will be given no weight in these proceedings.

The affidavit from the applicant's wife, [REDACTED] states that the applicant "returned" to the United States on May 12, 1985 and the affiant stayed with him there until January 1986. The applicant failed to provide detail regarding the region where the applicant resided in the United States. Despite this limitation, the affidavit constitutes some evidence of the applicant's residence in the United States from May 1985 to January 1986.

The inconsistencies in the evidence provided by the applicant, noted above, are material to his claim in that they have a direct bearing on his residence in the United States during the requisite period. As stated previously, 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, supra*. The additional evidence provided by the applicant is insufficient to overcome the inconsistencies in the record and to meet his evidentiary burden in these proceedings.

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.