



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 05 249 13414

Office: NEW YORK

Date:

APR 03 2009

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.

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, New York. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the applicant has submitted sufficient evidence to meet his burden of proof and to establish his claim. Counsel submits a letter from [REDACTED] regarding his friendship with the applicant since 1981.

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) 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 “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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

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 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.

The pertinent evidence in the record is described below.

1. A letter from [REDACTED] who states he has known the applicant as a friend since 1981.
2. An Affidavit of Witness from [REDACTED] who states he has known the applicant as a friend since 1981.
3. A notarized residency verification from [REDACTED] who states that the applicant resided and maintained residence in Brooklyn, New York, from June 1981 until March 1985.
4. Nearly identical Affidavit of Witness statements from [REDACTED] and [REDACTED] stating they have known the applicant since June 1981.
5. A notarized statement from [REDACTED] who states the applicant was under his treatment between December 11, 1981 and December 21, 1981.
6. A notarized employment statement from [REDACTED] in Astoria, New York, who states the applicant was employed at the firm between September 1981 and March 1985.

Considering [REDACTED] and [REDACTED] (Items # 1 & 2 above) state they have known the applicant for over 25 years, their statements lack sufficient detail to confirm that the applicant resided in the U.S. for the requisite period.

On his Form I-687 he signed on May 29, 1990, the applicant stated he resided in Brooklyn, New York, from June 1981 to December 1983, in Astoria, New York, from January 1984 to March 1985, and in North Miami, Florida from April 1985 to June 1986. However, on his current Form I-687, he states that he resided in Brooklyn from January 1981 to December 1983, in Astoria from January

1984 to June 1986, and in Jackson Heights, New York from July 1986 to May 1989. Both Forms I-687 are at variance with the residency verification from [REDACTED] (Item # 3), who states that the applicant resided and maintained residence in Brooklyn, New York, from June 1981 until March 1985. The nearly identical Affidavit of Witness statements (Item # 4), all list the applicant as living in Brooklyn, New York, from June 1981 to December 1983 and then in Astoria, New York, from January 1984 to June 1986 and in Corona, New York, from July 1986 to April 1989 which does not coincide with either of his Forms I-687.

The notarized statement from [REDACTED] (Item # 5), is not sufficient evidence in itself to establish that the applicant resided in this country during the entire requisite period.

On his current Form I-687, he also stated that he worked as a door to door newspaper delivery person from September 1981 to April 1982. The notarized employment statement from [REDACTED] (Item # 6), is therefore not credible because the applicant did not claim to be employed by the firm between September 1981 and March 1985. Additionally, the employment verification letter does not provide the applicant's address at the time of employment 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. 8 C.F.R. § 245a.2(d)(3)(i).

On his current Form I-687 filed on June 6, 2005, the applicant listed his two absences dating back to January 1, 1982 as being for emergency family visits to Bangladesh from March 15, 1988 to April 22, 1988 and from May 15, 1997 to June 20, 1997. However, in his notarized statement dated May 20, 1983, the applicant stated that he had traveled to Tijuana, Mexico from California from 3/01/1985 to 4/20/1985, and from 3/15/1988 to 4/22/1988 and to Dhaka Bangladesh to visit his family in 1985 and to see his ill mother in 1988. Additionally, on his Form G-325 A, Biographic Information, that he signed on May 20, 2003, the applicant stated that he married [REDACTED] on March 20, 1988 in Bangladesh. However, on his Form G-325 A that he signed on May 20, 2005, the applicant stated that he married [REDACTED] on June 10, 1987 in Bangladesh. Both Forms G-325 A indicated he had no former wives.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant asserted employment and residential histories on his I-687, are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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