



U.S. Citizenship
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FILE:



Office: NEW YORK

Date:

APR 03 2009

SRC 02 078 50760

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 in New York City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established the requisite continuous residence and continuous physical presence in the United States.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. See 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. See 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. See 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. See 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 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 or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The applicant, a native of Bangladesh who claims to have resided in the United States since March 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, at the New York District Office on January 7, 2002.

In the Notice of Intent to Deny (NOID), dated September 29, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant admitted at his interview on May 10, 2005, that in support of his claim of continuous residence in the United States during the requisite period, he submitted affidavits from affiants who were unknown to him and he had obtained the affidavits from a friend named [REDACTED]. The director also noted that the remaining affidavits were neither credible nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 8, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant’s response to the NOID failed to overcome the reasons for denial stated in the NOID. The director also noted that the applicant had been absent from the United States from September 29, 1987 to October 31, 1987, an absence of for 33 days which the applicant claimed was due to a visit to his sick cousin in Mexico. However, the applicant did not know the address of his cousin in Mexico, and failed to provide evidence to validate the alleged illness of his cousin; therefore, the applicant could not establish that the absence was due to an emergent reason. Accordingly, the director determined that the absence of 33 days was not brief, casual and innocent.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate the requisite continuous residence and continuous physical presence in the United States. The applicant submitted evidence, including a letter of employment, and affidavits to support

his Form I-687 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letter

The applicant submitted a letter of employment, dated April 2, 1993, from [REDACTED] Manager of [REDACTED] located at [REDACTED], stating that the applicant had been employed as a delivery person since March 10, 1981.

It is noted, however, that the letter failed to provide the applicant's address at the time of employment, show periods of layoff, 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 required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, therefore, is not probative as it does not conform to the regulatory requirements.

Affidavits and letters

The record contains the following:

1. Two affidavits from [REDACTED] dated September 13, 2004, and February 15, 2008, respectively, attesting to knowing the applicant to have resided in the United States since September 1981. In his first affidavit, [REDACTED] attests that he met the applicant at a cultural program in 1981, and since then they have met each other at family, social, and cultural events. In his second affidavit, [REDACTED] lists addresses, in New York, for the applicant from March 1981.
2. Two affidavits from [REDACTED], dated January 5, 2005, and February 15, 2008, respectively, attesting to knowing the applicant to have resided in the United States since 1987. In her first affidavit, [REDACTED] also attests that the applicant is a "good friend," and he participates in religious meetings and family occasions. In her second affidavit, [REDACTED] lists addresses, in New York, for the applicant from September 1987.
3. A notarized letter from [REDACTED], attesting to having known the applicant to have resided in the United States since 1984. [REDACTED] also attests that the applicant participates in community and religious meetings, and attends all occasions of the Bangladesh society in New York.

However, the affiants do not supply enough details to lend credibility to an at least 20-year relationship with the applicant. For instance, the affiants do not indicate how they date their acquaintance with the applicant in the United States so as to reflect that they had a personal knowledge of the applicant's presence in the United States, except making generalized statements, such as that they met the applicant at a cultural event; do not indicate how frequently they had contact with the applicant; or, whether and how they maintained a relationship with the applicant since their acquaintance with the applicant. Given these deficiencies, these affidavits have minimal

probative value in supporting the applicant's claim that he entered the United States in March 1981 and resided in the United States for the entire requisite period.

The record of proceedings also contains a letter from [REDACTED], [REDACTED], located at [REDACTED], stating that he has known the applicant for a "long time," and, in 1987 when he was the Imam of the [REDACTED] the applicant performed his prayers at the Masjid. The letter is not probative, however, as it does not indicate during what periods the applicant attended the Masjid. Furthermore, 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.

The letter from [REDACTED] does not comply with the above cited regulations because it does not state the address where the applicant resided during the attendance period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

In addition, the applicant has submitted questionable documentation. In an attempt to establish his continuous residence in the United States throughout the requisite period, the applicant submitted affidavits from [REDACTED], and, [REDACTED]. However, contrary to the applicant's assertion, these affidavits are not credible. As noted by the director, the applicant admitted at his interview on May 10, 2005, that these affiants were unknown to him, and he had obtained the affidavits from a friend named "[REDACTED]" These affiants, therefore, cannot attest to the applicant's residence in the United States as they do not know the applicant.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from March 1981 as he claimed. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

It is noted that even if the applicant's 33-day absence to Mexico from September 29, 1987 to October 31, 1987, is deemed brief, casual and innocent, the evidence, discussed above, does not individually, nor cumulatively, establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to

January 1, 1982, and that he had resided continuously in the United States during the entire requisite period.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous residence and his continuous physical presence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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