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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

41

FILE:

MSC-06-088-11911

Office: CHICAGO

Date:

**APR 22 2009**

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Chicago. 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 and found that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. The director claimed in his decision that the evidence submitted was not credible, and thus insufficient to establish eligibility for temporary resident status.

On appeal, counsel for the applicant asserts that the director should not deny the application solely because the applicant only submitted affidavits. Further, counsel states that the evidence submitted with the application is sufficient and credible as evidence of the applicant's continuous residence in the United States throughout the requisite period.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 (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 furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982, and continuously resided in the United States throughout the requisite period.

The applicant stated at his interview with a United States Citizenship and Immigration Service (USCIS) officer on January 22, 2007 that he first entered the United States lawfully as a visitor in 1981. In a declaration dated January 29, 2001, the applicant claims that he has resided continuously and unlawfully in the United States since before January 1, 1982 through July 1987, the date he attempted to file the application for temporary resident status. To establish his continuous residence in the United States throughout the requisite period, the applicant submitted five affidavits.

**The affidavit from [REDACTED] will not be considered since the affiant claims to have known the applicant since 1991. Both [REDACTED] and [REDACTED] state that they have known the applicant since 1981 and that they are aware of the applicant's absence from the United States from June to July 1989 and between December 1990 and January 1991, respectively. Both affiants, however, fail to 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 have 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 affidavits do not indicate that their assertions are probably true. Therefore, they have little probative value.

in his sworn statement states that he has known the applicant for a long time. He claims further that the applicant was an employee at his business establishment called [REDACTED] from 1982 to 1986. Along with his sworn statement, the affiant submits evidence to show that his business establishment did exist during the requisite period. The sworn statement from [REDACTED] is not probative as evidence of the applicant's continuous residence or employment in the United States during the requisite period because the affiant fails to provide specific information about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i) concerning past employment records. Specifically, the affiant fails to provide the applicant's address at the time of his employment, the exact period of the applicant's employment, the description of the applicant's duties with the company, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records. Further detracting from the credibility of the sworn statement from [REDACTED] is the applicant's failure to include [REDACTED] as his employer from 1982 to 1986 in both his 1991 and 2005 Forms I-687.

[REDACTED] claims in his affidavit that he grew up together with the applicant in India. [REDACTED] also indicates in his affidavit that the applicant left India to go to the United States in 1981. Further, the affiant states that the applicant picked him up at the airport when he came to the United States in 1984. The affidavit has minimal evidentiary value as evidence of the applicant's residence in the United States before January 1, 1982 since the affiant resided in India during part of the requisite period. Additionally, the affiant fails to state with specificity where the applicant resided in the United States during the requisite period, where he resided with the applicant in 1984, or other details about his relationship with the applicant to establish the credibility of the assertions. Further weakening the probative value of [REDACTED] affidavit is his statement that the applicant picked him up in 1984 when he arrived in the United States. [REDACTED] states in a previously submitted affidavit dated March 29, 2003 that he arrived in Chicago, Illinois in 1985. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

On appeal, counsel claims that the director should not deny the application solely because the applicant only submitted affidavits. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the affiants' lack of relevant details and the inconsistencies with the applicant's Forms I-687 seriously undermine their credibility and claim of the applicant's residence in the United States during the requisite period.

Additionally, a review of the applicant's Form I-687 filed in 1991 reflects that the applicant listed an absence from the United States between May and June 1988 to get married. Based on the applicant's most recently filed Form I-687, the applicant indicated that he left the United States to get married in August 1983. No evidence has been submitted or explanation provided to resolve these inconsistencies in the record.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the noted inconsistencies, and the lack of detail in the record 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 lack of credible supporting documentation, it is concluded that 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.

Beyond the decision of the director, based on the applicant's Form I-687 filed in 1991, the AAO notes that his reentry into the United States with a visitor's visa in September 1983, if true, is inconsistent with his intention to resume permanent residence in the United States, on that date. Thus, the applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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