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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

MSC-04-335-10826

Office: NEWARK

Date:

AUG 19 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:

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.

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, Newark. 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 denied the application, finding 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, the applicant asserts that he has established his unlawful residence for the requisite time period. He submits additional evidence in support of his application.

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 periods, 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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, *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 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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.

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 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 the following:

- An affidavit from [REDACTED] who indicates that he met the applicant in September 1981 while they were working at a Citgo gas station. He lists the applicants' addresses during the relevant period and indicates that he visited the applicant at his home on many occasions during the relevant period. He does not indicate how he dates his acquaintance with the applicant, or offer any additional relevant details regarding the applicant's residency during the relevant period.

- An affidavit from [REDACTED] who indicates that he met the applicant in May 1982 when they lived at the same apartment complex. He indicates that he assisted the applicant in finding employment at Nirvana Restaurant in June 1983.
- An affidavit from [REDACTED] who indicates that the applicant used to work under his supervision at a Citgo gas station between September 1981 and May 1983. He offers no additional information regarding the applicant's employment and he submits no evidence of either his or the applicant's employment during that period, such as pay check stubs, W-2 or tax return documents.
- An affidavit from [REDACTED] who indicates that he met the applicant in August 1981 at a private function in Jamaica, Queens, New York. He does not indicate how he dates his initial acquaintance with the applicant or how often he saw the applicant beyond stating that they saw each other "a number of times under different private affairs."
- A letter from [REDACTED] who indicates that the applicant was evaluated on April 5, 1986 for acute sickness. The letter is not notarized.
- An affidavit from [REDACTED], who indicates that she was the superintendent of the building where the applicant resided from February 1981 until February 1985, [REDACTED] in Brooklyn, New York. Her testimony contradicts the applicant's testimony. First, the applicant indicated that he first entered the United States in August 1981. Second, he indicates that he did not move to the [REDACTED] address until February 1982. 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. This affidavit will be given no evidentiary weight.
- An affidavit from [REDACTED] who indicates that the applicant used to reside with his uncle [REDACTED] between August 1981 and July 1986. He indicates that he assisted the applicant in obtaining employment at the Citgo gas station in September 1981.
- An affidavit from the applicant's mother, [REDACTED] who indicates that her son entered the United States in 1981, though she does not have direct personal knowledge of his entrance because she lived in Bangladesh during that period. She also indicates that her son performed "some agricultural jobs in an agricultural farm in Pompano Beach, Florida between March 1985 and April 1986." This testimony contradicts the applicant's stated address during the period. He does not list any addresses in Florida at any time during the relevant period. 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. The applicant has not addressed this inconsistency.

- Affidavits from [REDACTED] and [REDACTED]. Although the affiants state that they met the applicant at some point during the relevant period, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. Few affiants provided information beyond stating the applicant's addresses. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- Two employment verification letters. The first letter, from [REDACTED] of Nirvana Penthouse, indicates that the applicant was employed by the restaurant between June 1983 and December 1985. The second letter is signed by [REDACTED] of Talk of the Town restaurant and is dated September 4, 1987. [REDACTED] indicates only that the applicant has been employed since September 1987. Although the statements are on company letterhead, they fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.
- Affidavits from the following six organizations: The Bangladesh American Education & Cultural Society of North America, indicating that the applicant has been a member since 1981; Federation of Bangladeshi Associations in North America indicating that the applicant has been a member since January 1986; The Bangladesh Society, Inc., New York indicating that the applicant has been a member since October 1981; BHEC & Civil Patrol Group indicating that the applicant has been a member since July 1983; Baitul Mukarram Masjid & Islamic Center, Inc. indicating that the applicant has been a member since December 15, 1982, and, [REDACTED] indicating that the applicant has been a member since September 8, 1987. The applicant lists only his membership in The

Bangladesh Society, Inc., New York and BHEC & Civil Patrol Group on his Form I-687. 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. None of the letters comply with the above cited regulation because they do not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; or, establish the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

The applicant has submitted the following contemporaneous evidence of his residence during the relevant period:

- A Bank of America Visa credit card dated 1983 with an expiration in 1985;
- Concert tickets which do not bear the applicant's name;
- A letter from United Airlines indicating that the applicant requested a refund for an airline ticket purchased from New York to London on June 26, 1987. This letter is not notarized;
- A letter dated April 15, 1986 from Unitedworld telecom, addressed to the applicant. This letter is not notarized;
- A letter from Flatbush Federal Savings addressed to the applicant, dated May 5, 1987. This letter is not notarized;
- A registration form from Bellevue Hospital Center addressed to the applicant, dated January 22, 1988.

It is noted by the AAO that several of the letters in the record of proceeding contain the same font and are printed on the same gray paper. With the exception of the letter from Bellevue Hospital, they are not notarized and their veracity is unverifiable.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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.