



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: HOUSTON Date: DEC 03 2009
MSC 05 278 11016
MSC 08 122 12942-APPEAL

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.

Perry Rhew
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, Houston. 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, 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. In so finding, the director questioned the factual content of two of the notarized statements that the applicant submitted in support of his application. The director also found that the applicant had provided three receipts with 1984 dates from a business called [REDACTED] which pre-dated the existence of the company by three years as the company was not founded until January 1987.

On appeal, counsel explains that her client had his receipts to “back up” the time he was at all particular places and that as his attorney, she was only quoting what the persons stated in the notarized statements from the individuals noted by the director in her decision. Counsel states the affiants may have gotten confused as they may not have known exact dates in great detail. Counsel indicates the [REDACTED] receipts were presented by the owner of the business and that her client reiterates that he bought the furniture in 1984, that he does not want to get himself into trouble with the United States Government and that he has not submitted any false information.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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.* 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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
2. A letter from [REDACTED] who states he knows the applicant has resided in the United States since 1982.
3. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
4. Letters from [REDACTED] and [REDACTED], who state they know the applicant has resided in the United States since 1984.
5. Letters from [REDACTED] and [REDACTED] in Houston, Texas, who state they know the applicant has resided in the United States since 1985.

6. A letter from [REDACTED] of The Islamic Society of Greater Houston who states the applicant has been participating in the activities of the organization since 1981.
7. A letter from [REDACTED] of the Islamic Mission Masjid Noor in Houston, Texas, who states the applicant has been a member of the organization since 1986.
8. A letter from [REDACTED] who states that the applicant resided at [REDACTED] in Houston, Texas, from January 1982 to December 1984.
9. The applicant's rental application for renewal dated February 1, 1989 for his apartment at [REDACTED] in Houston, Texas. The application reflects his previous street address was [REDACTED] in Houston, Texas.
10. A letter from [REDACTED] in Houston, Texas, who states the applicant resided at [REDACTED] in Houston, Texas, from February 1, 1986 to September 30, 1989.
11. An envelope from a person in Pakistan addressed to the applicant in Houston, Texas, postmarked October 12, 1984.
12. The applicant's receipts from [REDACTED] in Houston, Texas, dated February 9, 1984, March 21, 1984 and April 13, 1984.
13. A letter from [REDACTED], dated March 28, 1984 from Northwest New & Used Office Furniture addressed to the applicant in Houston, Texas.
14. An employment verification letter from [REDACTED] of Fuel Food Mart in Houston, Texas, who states the applicant was employed by the firm from March 1982 to December 1982.
15. An employment verification letter from [REDACTED] in Houston, Texas, who states the applicant worked for the firm from February 1983 to November 1984.
16. A notarized verification of employment document from [REDACTED] who states the applicant worked for him at Sunset Food Store in Houston, Texas, from January 1985 to April 1990.
17. The applicant's receipt dated August 27, 1987 from T Shirts Etcetera in Houston, Texas.

18. The applicant's [REDACTED] dated April 9, 1987 from a firm in New York, New York, showing his consignment address as being in Houston, Texas.

The persons providing letters and statements (Items # 1 through # 5 above) claim to have known the applicant for a substantial length of time, in one case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list The Islamic Society of Greater Houston (Item # 6), or Islamic Mission Masjid Noor (Item # 7).

On his Form I-687, the applicant stated that he resided at [REDACTED] from January 1982 to December 1984 and at [REDACTED] in Houston, Texas, from January 1985 to April 1990. However, his rental application for renewal (Item # 9) dated February 1, 1989 indicates his previous street address was [REDACTED] in Houston, Texas, (Item # 8) and not [REDACTED] in Houston, Texas, the address where he said he resided on his Form I-687 before he moved to [REDACTED]. The letter from [REDACTED] (Item # 10) indicates the applicant resided at [REDACTED] in Houston, Texas, from February 1, 1986 to September 30, 1989. However, the applicant's stated on his Form I-687 that he resided at [REDACTED] in Houston, Texas, from January 1985 to April 1990. The envelope (Item # 11) does not bear any indication that it ever entered the United States postal system.

The director found that the applicant had provided three receipts with 1984 dates from a business called [REDACTED] (Item # 12) which pre-dated the existence of the company by three years as the company was not founded until January 1987. The record contains a letter to the applicant dated March 28, 1984 (Item # 13) from the same company. Counsel indicates the [REDACTED] receipts were presented by the owner of the business and that her client reiterates that he bought the furniture in 1984, that he does not want to get himself into trouble with the United States Government and that he has not submitted any false information. However, no evidence has been submitted to overcome the director's finding. Additionally, the employment verification letters (Items # 14 through # 16) do not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The applicant's receipt (Item # 17) and his [REDACTED] (Item # 18) do not establish that the applicant resided in the United States during the entire requisite period.

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's asserted affiliation and residential histories on his Form 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.