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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK

Date:

JAN 06 2009

MSC-05-146-11476

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.

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 (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), a Form G-325A, Biographic Information, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status throughout the requisite period. In denying the application, the director observed that the applicant was nine years old when he first entered the United States and did not include in his application evidence such as school records, medical and immunization records, and an affidavit from an adult responsible for his care and financial support to support his claim of residence in the United States since 1981. The director also found an inconsistency in the record relating to the applicant's residence during the requisite period.

On appeal, counsel for the applicant claims that the inconsistency in the record is accredited to a simple clerical error and should have been discussed during the interview. Counsel further claims that the U.S. Citizenship and Immigration Services (USCIS) erroneously denied the application by focusing only on the inconsistency in the record and ignoring all of the other evidence submitted.

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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the

CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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.

The issue here is whether the applicant has met his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status throughout the entire requisite period.

The applicant claims in his affidavit and during interview that he first entered the United States in December 1981 with his parents. To show continuous residence in the United States since 1981, the applicant submitted ten affidavits from friends and families, three letters from prior employers, and two letters from non-governmental organizations. The record also includes a completed packet for adjustment of status and photocopies of pages from the applicant's passport issued by Bangladesh government on June 3, 1995. The applicant's Form I-94 indicates that he was admitted to the United States on September 9, 1999 as a nonimmigrant visitor until March 8, 2000.

As stated above, the volume of evidence is not necessarily the decisive factor in the search for the truth. The contents of the affidavits must be assessed and the quality of the evidence determined. *Matter of E-M-*, *supra* at 82. The ten affiants in this case all state they have known the applicant since 1981, that the applicant has resided in the United States since then, and that the applicant applied for amnesty between May 1987 and May 1988 but the amnesty application was denied because of the applicant's short absence from the United States in 1987. Other than repeating those facts, they fail to provide any information demonstrating personal knowledge of the applicant's whereabouts in the United States during the requisite period. There are no details regarding how or where the affiants met the applicant or how they were aware of his residence. Furthermore, most of these affidavits were typed in a fill-in-the-blank form. Some were undated. Two affiants claimed to have been the applicant's roommate during the requisite time, but they did not include a copy of their government-issued identity card or some other evidence establishing their residence in the United States during the time they stayed with the applicant, specifically between 1981 and 1988. Because these affidavits are significantly lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The letters from [REDACTED] New York and [REDACTED] of America state that the applicant has been an active member since 1983 and 1986 respectively. The letters further state that the applicant has good moral character, but no other detail about the applicant's membership is provided. The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide specific requirements as to what a letter from an organization should contain. Letters from organizations that do not comply with the specific requirements do not have to be accorded as much evidentiary weight as letters that otherwise comply. In this case, the authors of the letters fail to include inclusive dates of the applicant's membership, the address or addresses where the applicant resided during membership period, how the authors knows him, and where they acquire the information relating to his membership in their organizations. Because these letters do not comply with the regulations, they can only be accorded minimal weight as evidence of the applicant's claim of eligibility for the benefit.

The letters from [REDACTED], and [REDACTED] will not be considered since they contain period of employments outside the requisite period. Under CSS/Newman Settlement Agreements, an applicant for temporary resident is only required to maintain continuous residence and physical presence in the United States from before January 1, 1982 until the date he or she filed or attempted to file a completed application for permanent resident status. The record indicates the applicant attempted to file his application on February 19, 1988. Those employment letters attest to the applicant's employment in 1991, 1995, and 2006, thus are irrelevant to his claim of residence in the United States during the requisite period.

The record shows the applicant, in 2001, filed a Form I-485 adjustment of status application concurrently with his wife's Form I-130 petition for immigrant visa. In connection with his adjustment of status application, the applicant also filed a Form G-325A, on which he indicated that he resided in Bangladesh from 1972 to 1996. In 2005, the applicant submitted a Form G-325A along with his application for temporary resident status, where he stated he resided at [REDACTED] Brooklyn, New York, from September 1999 to February 2005. There is no inconsistency between the applicant's 2001 and the 2005 Form G-325A as the director noted above; however the information the applicant provided in connection with his adjustment of status is inconsistent with the information he offered to the director in connection with his temporary resident status application. 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 submitted independent and objective evidence to explain or reconcile the difference between the information he provided for adjustment of status and the information he offered for temporary resident status application.

On appeal, counsel claims that USCIS erroneously denied the application when it ignored the other evidence submitted and only focused on the inconsistency in the record. Upon review of the record, the AAO finds that the evidence submitted is neither credible nor probative to support the applicant's claim that he entered the United States in December 1981 and has continuously resided in the United States in an unlawful status since December 1981 through February 19, 1988, when he allegedly attempted to file a completed application for temporary resident status.

The inconsistency in the record coupled with the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously 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 and inconsistency in the record, 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, the applicant appears to be ineligible for the benefit sought because of his absence from the United States during the requisite period. As stated above, no single absence for more than 45 days and no multiple absences for a total of more than 180 days from the United States are allowed during the requisite period, unless return cannot be accomplished due to emergent reasons. On a Form For Determination of Class Membership in CSS v. Thornburgh (Meese), the applicant listed October 6, 1987 and December 3, 1987 as date of departure from the United States and date of reentry into the United States, respectively. The AAO observes that the absence from the United States between those two dates in 1987 is more than 45 days and thus, breaks the applicant's continuous residence in the United States. There is no explanation of an emergent reason or reasons relating to the applicant's inability to return to the United States within the prescribed time allowed. For this additional reason, the application may not be approved.

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