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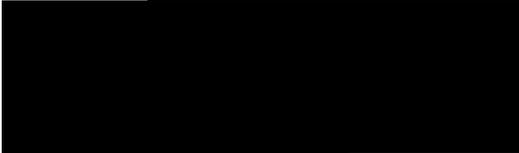
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: MSC-06 101 26062

Office: NEW YORK CITY

Date: JUL 02 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. 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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Pakistan who claims to have lived in the United States since October 1980, 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 on January 9, 2006. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of her application. In counsel's view, the evidence in the record is sufficient to demonstrate the applicant's continuous residence in the United States during 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) 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 AAO determines that she has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following eight years through May 4, 1988.

The record includes letters from two business which the applicant claim were former employers – JAMAICA Avenue Corp. in Jamaica, New York, stating that the applicant was employed as a

helper from March 1981 to July 1984, and was paid \$3.25 per hour, and J & J Mini Market Inc. in Brooklyn, New York, stating that the applicant was employed as a cashier from October 1987 to March 1991, and was paid \$4.00 per hour. These employment letters do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records, did not indicate the location of such records and whether they were available for review. Nor are the letters accompanied by any earnings statements, pay stubs, or tax records from the applicant demonstrating that he was actually employed during any of the years claimed. In addition, although the letters were signed by the supervisor and the president, respectively, their names were not identified on the letters. For the reasons discussed above, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States during the requisite period for legalization.

The record includes a letter from the secretary general of Pakistani American Merchant Association, stating that the applicant was a member of the organization from October 1984 to 1991, and again from May 1996 to the present. The letter, which was signed by Abdul Aziz Butt as the secretary general, does not comport with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter indicated the specific period of the applicant's membership in the organization, but did not indicate where the applicant's lived, address during the period of membership, did not indicate how the authors knew the applicant, and whether his information about the applicant was based on personal knowledge, organizational records, or hearsay. Since the letter does not comply with sub-parts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), and the author does not claim to know anything about the applicant before January 1, 1982, the AAO concludes that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the date of filing application.

The notarized letters and affidavits in the record from individuals who claim to have known the applicant during the 1980s, have minimalist or fill-in-the-blank formats with limited personal input by the authors. For the length of time the claim to have known the applicant – in most cases since 1981 – the authors provided very few details about the applicant's life in the United States, such as where she worked and the nature and extent of their interactions with her over the years. Nor are the notarized letters and affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. In view of the substantive shortcomings, the AAO finds that the notarized letters and affidavits 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 of filing application.

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 analysis of the evidence, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence that she 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.