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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

PUBLIC



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FILE: [Redacted]
MSC 06 027 17965

Office: NEW YORK

Date: **JUL 27 2009**

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:



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, New York. The decision is now before the Administrative Appeals Office 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 noted that at his interview, the applicant stated that he arrived in the United States on October 16, 1981 on a cargo ship as a seaman at New Jersey and that he had lost his seaman card. The director also noted that he had not submitted any evidence of the entry nor did Citizenship and Immigration Services (USCIS) records confirm his entry as a seaman.

On appeal, counsel states that USCIS failed to weigh the evidence already submitted and that he is submitting an additional document to bolster his claim. Counsel further states that during his interview, the applicant did mention that he arrived at the United States on October 16, 1981 on a cargo ship as a seaman to New Jersey but he does not remember that he told the interviewing officer that he lost his seaman card. Counsel emphasized that he did provide USCIS with a shore pass that he was given at that time.

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) 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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 either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

The pertinent evidence in the record is described below.

1. The applicant’s Crew Identification from the S.S. *Britanis* dated “7/1.”
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
3. An Affidavit of Support from [REDACTED] who states that the applicant lived with him in Brooklyn, New York, from October 19, 1981 to November 28, 1987.
4. An Affidavit of Residence form from [REDACTED] who states that the applicant lived with him in Brooklyn from December 1987 to May 1994.
5. A U.S. Postal Service Money Order customer’s receipt, showing that funds were sent to a person in Bangladesh on April 29, 1985.
6. A letter from [REDACTED], Publicity and Public Relation Secretary of Bangladesh Society Inc., Elmhurst, New York, who states that the applicant is a member of the organization and that he has personally known him for the last 24 years.
7. An employment verification letter from [REDACTED], President of K & J General Construction Co. in Brooklyn New York, who states the applicant was employed by the firm from October 25, 1981 to November 11, 1986.

8. An employment verification letter from [REDACTED] [REDACTED] in Brooklyn, New York, who states the applicant was employed by the firm from December 1986 to April 1992.

As stated above, the director noted that at his interview, the applicant stated that he arrived in the United States on October 16, 1981 on a cargo ship as a seaman at New Jersey and that he had lost his seaman card. The director also noted that he had not submitted any evidence of the entry nor did Citizenship and Immigration Services (USCIS) records confirm his entry as a seaman. On appeal, counsel emphasized that he did provide USCIS with a shore pass that he was given at that time. The only document of record that could remotely be considered a shore pass was the applicant's Crew Identification (Item # 1 above). This document does not show the year that it was issued, does not carry the signature of the master of the vessel on any other authorized individual representing the [REDACTED] and carries no indication that it was a shore pass. It is determined that on appeal, the applicant has not documented his purported entry to the United States as a seaman on October 16, 1981.

The affiants (Item # 2 above) are vague as to how they date the beginning of their acquaintances with the applicant, how often and under what circumstances they had contact with him during the requisite period and they do not provide details to lend credibility to their claims. It is unclear on what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite time period. As such, their statements shall be afforded minimal weight. The residential verification statements (Items # 3 and # 4) are not verified by any documentation submitted by the applicant such as leases, rental receipts, government issued documents such as driver's licenses, receipts for purchases or letters from others that would establish that he actually resided at either residence during the requisite period. The U.S. Postal Service Money Order (Item # 5) contains no information establishing that it was the applicant who sent the funds abroad. 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 Bangladesh Society Inc., New York, (Item # 6). Additionally, the employment verification letters (Items # 7 and # 8) 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).

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 history on his Form I-687 is accompanied by inconsistent evidence.

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 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.