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U.S. Citizenship
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FILE: [REDACTED]
MSC 06 031 13081

Office: NEW YORK

Date:

JUN 10 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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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.

On appeal, the applicant states that he is trying to collect evidence and as soon as he locates documents he will submit them. He submits a letter from [REDACTED], General Secretary of the Bangladesh Society Inc., New York stating the applicant has belonged to the organization since 1981. He further states that his date of birth on his I-95A, Crewman's Landing Permit, was corrected with white ink which was a clerical matter and was done by the concerned authority. He argues that his I-95A clearly establishes his entry to the United States on May 10, 1980.

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 Form I-95A, Crewman’s Landing Permit, issued on May 19, 1980 in San Francisco lists his arrivals sequentially with him arriving in the United States in Los Angeles on July 14, 1980 and September 12, 1980 and in San Francisco on October 30, 1980 and next in Los Angeles on February 1, on “198_” (underline supplied). The last digit of the February 1 entry is indiscernible.
2. Affidavit of Witness statements from [REDACTED], and [REDACTED] who provide the year they began living in the United States and explain that he met the applicant in this country.
3. An Affidavit of Witness statement from [REDACTED] who indicates he knows the applicant to have resided in the United States since 1982.
4. An Affidavit of Witness from [REDACTED] who states that he has personal knowledge that the applicant resided at [REDACTED] in New York, New York, from October 1981 to July 27, 1992.
5. An Affidavit of Support from [REDACTED] apartment lease owner, who states that the applicant lived with him in Brooklyn, New York, from October 1981 to December 1987.
6. An Affidavit of Support from [REDACTED] apartment lease owner, who states that the applicant lived with him in Brooklyn, New York, from January 1988 to December 1995.

7. A notarized letter from [REDACTED], president of J.H. Construction Inc., in Brooklyn, New York, who states the applicant worked for the firm from October, 1981 to December 1987.
8. A notarized letter from [REDACTED], owner of Abdul Enterprises Inc., in Stamford, Connecticut, who states the applicant worked for the firm from January 1983 to December 1985.
9. A notarized letter from [REDACTED], owner of a firm named Newsstand and Candy Store in New York, New York, who states the applicant worked at his store from September 1987 until January 1989.
10. A notarized letter from [REDACTED], manager of Jahan Contracting, in Brooklyn, New York, who states the applicant worked for the firm from January 1988 to December 1995.
11. A letter from [REDACTED], General Secretary of the Bangladesh Society Inc., New York, stating the applicant has belonged to the organization since 1981.

On his Form G-325A, Biographic Information, that he signed on March 10, 2002, the applicant stated that he resided in Bangladesh from February 1980 to October 1981. However, his Form I-95A (Item # 1 above) shows him arriving in San Francisco on July 14, 1980. It is noted that on appeal, the applicant claims that he entered the United States on May 10, 1980 which is at variance with both his statements on his Form G-325A and the information the inspector stamped on his Form I-95A. On his Form for Determination of Class Membership in CSS vs. Thornburgh (Meese) that he signed on July 27, 1987, the applicant stated that he first entered the United States on October 23, 1981 and that he did not depart this country until July 7, 1987. This information differs from his other claimed dates of entry.

[REDACTED], and [REDACTED] (Item # 2) all state when they arrived in the United States, however, none of them indicate the year when they first met the applicant. Considering that [REDACTED] (Item # 3) claims to have known the applicant for more than 20 years, his statement lacks sufficient detail to confirm that the applicant resided in the United States for the requisite period.

On his Form I-687 that he signed on July 27, 1992, the applicant stated that he resided at "[REDACTED]" from October 1981 to July 27, 1992. However, on his Form I-687 that he signed on July 27, 1992, he stated that he resided at "[REDACTED]," from October 1981 to December 1982 and at "[REDACTED] in Stamford, Ct," from January 1983 to December 1985. On his current form I-687, he states that he resided at "[REDACTED], Brooklyn, NY" from October 1981 to December 1987 and at "[REDACTED], Brooklyn, NY" from January 1988 to December 1995. This information differs from the statements provided by [REDACTED] and [REDACTED] (Items # 4 through # 6).

The employment verification letters (Items # 7 through # 10) 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). Additionally, 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. Consequently, this letter submitted on appeal will be given no weight in establishing that the applicant resided in the United States during the requisite period.

Absent evidence to the contrary, the applicant was probably residing abroad prior to the conception of his daughter who was born on July 20, 1988 in Bangladesh.

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 employment 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.