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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  
and Immigration  
Services

[REDACTED]

LI

FILE:

[REDACTED]

Office: NEW YORK CITY

Date:

**JUN 22 2009**

MSC-05 351 11669

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.

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 Bangladesh who claims to have lived in the United States since August 1981, 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 September 16, 2005. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal the applicant asserts that the director did not properly evaluate the documentation he submitted in support of his application. In the applicant's view, the evidence in the record is sufficient to establish that he meets the continuous residence requirement for legalization.

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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the following:

- A letter from \_\_\_\_\_ the president of The Greater Noakhali Society USA, Inc. in Brooklyn, New York, stating that he had known the applicant since 1981, that the applicant was a general member of the organization, and that the applicant had actively participated in most of "cultural and occasional programs and activities organized by The Greater Noakhali Society USA, Inc. since it was founded."

A photocopied envelope addressed to the applicant at [REDACTED] Brooklyn, New York, in care of his father.

A notarized letter from [REDACTED] a resident of Brooklyn, New York, dated September 4, 2005, stating that the applicant resided with him at [REDACTED] Brooklyn, New York, from August 1981 to January 1990.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant, who claims to have entered the United States with his father in August 1981, was only 8 years when he allegedly entered the United States in 1981. The applicant did not submit any credible evidence from his father to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of 8 in 1981.

The letter from the president of The Greater Noakhali Society USA, Inc., in Brooklyn, New York, does not comport with the regulatory requirements of 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 did not show the applicant's precise dates of membership in the organization, did not indicate where the applicant lived at any during the 1980s, did not indicate how and when he met the applicant, and did not indicate whether his information about the applicant was based on personal knowledge, the organizational records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), 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 May 4, 1988.

The photocopied envelope addressed to the applicant in Brooklyn, in care of his father, bearing a foreign postmark date of "9.3.85" does not appear to be genuine. The envelope does not bear a United States Postal Service mark to show that it was processed in the United States. The envelope, addressed to the applicant in care of his father, suggests that the applicant's father was residing at the Brooklyn address in 1985. However, [REDACTED] letter of September 4, 2005, indicated that he resided with the applicant at the Brooklyn, New York address from August 1981 to January 1990. The applicant did not submit any documentation to show that his father was residing in the United States during the 1980s.

The notarized letter from [REDACTED] stating that the applicant resided with him at [REDACTED] Brooklyn, New York has a minimalist format with very little input from the author.

Considering the length of time he claims to have known the applicant – since 1981 – [REDACTED] provided very few details about the applicant's life in the United States, such as where he worked, and the nature and extent of his interaction with the applicant over the years. The letter is not accompanied by evidence of [REDACTED]'s own identity and residence in the United States during the stated period. Nor is the letter accompanied by any documentary evidence – such as photographs, letters, and the like – of the author's personal relationship with the applicant in the United States during the 1980s. Additionally, letter is not supplemented by rent receipts, utility bills or other documents verifying that the applicant actually resided at the stated address during the period indicated. For the reasons discussed above, the AAO finds that the letter has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he filed his 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, the applicant has failed to establish by a preponderance of the evidence that he 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.