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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



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FILE:



Office: NEW YORK

Date:

JUN 24 2009

MSC 05 272 12646

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:

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.

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), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period and been continuously physically present in the United from November 6, 1986 until the date of filing or attempting to file an application under Section 245A of the Act.

On appeal, the applicant maintains that he has established eligibility and deserves a favorable determination. The applicant states that he has provided several affidavits that are credible and are due considerable weight.

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 245(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)(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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-*, *supra*. 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.* at 80. 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 petitioner 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, 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 or petition.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, (2) has continuously resided in the United States in an unlawful status for the requisite period of time, and (3) has been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview, the applicant claims to have first entered the United States by crossing the Canadian border with his father in December 1981 when he was nine years old. The notes also reveal that the applicant never attended school in the United States.

The record contains the applicant’s Form G-325A applications dated March 20, 2001 and May 8, 2003, signed by the applicant and submitted in connection with Form I-130, Petition for Alien Relative and his Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant claims on his Form I-130 that he entered the United States under an assumed name on February 5, 1999. Further, on both Forms G-325A, he listed his last address outside the United States as [REDACTED] Pakistan from February 1973 to February 1999. However, the applicant claims on his Form I-687 application to have resided in the United States during the same time period. Here, he lists his addresses as [REDACTED] Astoria, New York, from December 1981 to April 1988 and [REDACTED] New York from May 1988 to December 1994.

The applicant also claims on his Form I-687 application that he was employed at the India Raja Rani Restaurant, New York, New York, from December 1981 to December 1983 and Elite Imports, Inc., New York, New York, from January 1984 to December 1985. However, during this time period, the applicant was a child.

The inconsistencies regarding the dates the applicant initially entered into and resided continuously in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a letter, [REDACTED] states that she has known the applicant for a long time. [REDACTED] also attests to the applicant's good moral character but does not give any other information concerning the applicant. In her subsequent affidavit, she states that she has known the applicant for several years and provides no other information. When she was questioned by a United States Citizenship and Immigration Services (USCIS) adjudicating officer telephonically, [REDACTED] stated that she has known the applicant for seven or eight years and that he is her husband's friend.

In an affidavit, [REDACTED] states that he first met the applicant in 1981 during a religious gathering in Al-Rahman mosque in Jersey City, New York. However, the applicant claims on his Form I-687 application, that he was not associated with the mosque until January 1982. The affiant states in his affidavit that he knows the applicant has been physically and continuously residing in the United States since 1981 and has earned a living working at various jobs in New York from 1981 but he does not state how he acquired such knowledge.

The documents do not include sufficient detailed information about the applicant's initial entry, his continuous unlawful residence in the United States since December 1981, and his continuous residence in the United States throughout the requisite period. The documents do not overcome the inconsistencies within the applicant's statements where he claims to have resided outside the United States during the entire requisite period.

The applicant, on appeal, states that he never received the director's notice of intent to deny (NOID). His current address on the Form I-694, Notice of Appeal of Decision under Section 210 or 245A is the same address that is on the NOID and the NOID was not returned to USCIS as undeliverable. The applicant has not established that the director erred in not sending the NOID to his address of record.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence and physical presence in the United States throughout the requisite periods. The evidence submitted is insufficient to establish the applicant's 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 requisite period. 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 also failed to establish that he had been continuously physically present in the United States since November 6, 1986. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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