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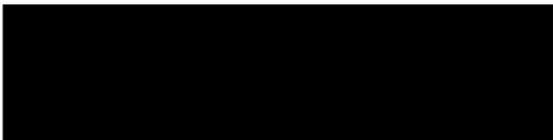
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-06-046-13186

Office: NEW YORK

Date: **MAY 20 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, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining 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. The director noted that the applicant failed to submit additional evidence in response to the Notice of Intent to Deny (NOID) sufficient to overcome the grounds for the denial stated in the NOID. The director noted in the NOID that the affidavits submitted on behalf of the applicant were not credible or amenable to verification. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director abused her discretion by failing to give due consideration to the evidence submitted in support of the applicant's application. Counsel further asserts that the applicant did respond to the NOID with credible evidence but that the director must not have reviewed the evidence prior to rendering her final decision. Counsel further asserts that the applicant has met his burden of proof with the evidence submitted. The AAO accepts counsel's explanation regarding the submission of additional evidence in response to the NOID and will conduct a de novo review of the evidence including the submission in response to the NOID as authorized.

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.

See 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).

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-*, 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.* 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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted an affidavit from the owner of Balaka Indian Restaurant where he stated that his restaurant employed the applicant as a member of the kitchen crew from February 1981 to June 1984. The affidavit does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided during the claimed employment period, the number of hours the applicant worked or any layoff periods

during which the applicant was not employed. 8 C.F.R. § 245a.2(d)(3)(i). The affiant also fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or payroll records that pertain to the requisite period to corroborate the assertions made by the affiant.

The applicant submitted a copy of a financial questionnaire from Bellevue Hospital Center Outpatient Registration bearing the applicant's name and dated August 15, 1984. Although this may serve as some evidence of the applicant's presence in the United States in August of 1984, it is insufficient to establish his continuous residence in the country throughout the requisite period.

The applicant submitted the following attestations from community organizations:

- A declaration dated November 5, 2005 from the general secretary of Bangladesh Society Inc. of New York that states that the applicant has been an active member of the organization since June 1982.
- A declaration from the secretary of the Forum for Human Rights that states that the applicant became a member of the organization in August of 1984.
- A declaration from the secretary of BHEC & Civil Patrol Group who stated that the applicant has been a member of the organization since June 1983.

The declarations do not conform to regulatory standards for attestations by churches or organizations. Specifically, the declarations do not show inclusive dates of membership; the declarants do not state the address(es) where the applicant resided during the membership period; nor do the declarants establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted the following affidavits:

- Affidavits from [REDACTED] and [REDACTED] where they stated that they shared an apartment with the applicant at [REDACTED] in Astoria, New York from 1981 and 1982 respectively, to 1984. They also indicated that the applicant resided at [REDACTED] in Astoria, New York from November 1984 to December 1988.
- Affidavits from [REDACTED] and [REDACTED] in which they stated that the applicant resided at [REDACTED] in Astoria, New York from February 1986 to December 1988 and that they are his friends and [REDACTED] claims to have been his ex-roommate.

- An affidavit from [REDACTED] who stated that he is an ex-roommate and friend of the applicant's and that they resided at [REDACTED] in Astoria, New York from January 1988 to April 1994.
- An affidavit from [REDACTED] who stated that he and the applicant were roommates at [REDACTED] in Astoria, New York from February 1982 to October 1984, and that they later moved to an apartment located at [REDACTED] in Astoria, New York where they stayed until December 1988. He also stated that he helped the applicant find a job at the Balaka Restaurant and that the applicant was employed there as a kitchen helper.
- An affidavit from [REDACTED] who stated that he found the applicant a room to rent at [REDACTED] in Astoria, New York in February of 1981, and that he shared that room with three other persons. He also stated that he arranged for the applicant to be employed part-time at the Balaka Restaurant in Manhattan, New York, where he worked for some years. He also stated that he has maintained close contact with the applicant since his arrival in the United States and can therefore vouch for his residency.

These affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable first-hand knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

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 immigration 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.