



U.S. Citizenship
and Immigration
Services

Identify the...
Prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

41

[Redacted]

FILE: [Redacted] Office: NEW YORK CITY
MSC 06 024 25863
MSC 08 009 12222 – APPEAL

Date: **OCT 14 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:

[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, 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 Pakistan who claims to have lived in the United States since January 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 October 24, 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. Counsel submitted a brief following receipt of the Record of Proceedings (ROP). Counsel however, did not submit additional evidence of the applicant's residence in the United States. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for the duration of the requisite period.

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 AAO determines that the applicant has failed to meet this burden.

The record reflects that the applicant has submitted conflicting information regarding his entry and continuous residence in the United States during the requisite period. At his interview on March 31, 2006, the applicant indicated that he first entered the United States on January 15, 1981. The applicant did not submit any evidence to establish such entry.

On a prior Form I-687 dated April 26, 1990, the applicant indicated that he last came to the United States on January 15, 1981, and resided continuously in the country except for a brief trip to Pakistan from October 4 to November 4, 1987. The applicant did not indicate any other trips outside the United States during the 1980s. On the same Form I-687, the applicant indicated that his son [REDACTED] was born in Pakistan on April 4, 1982, and his son [REDACTED] was born in Pakistan on December 8, 1983. As the applicant's only trip outside the United States was from October to November 1987, the applicant has failed to account for the conception and birth of his two children in Pakistan in April 1982 and December 1983. The applicant has not provided any evidence and the record does not contain any documentation showing that the applicant's wife was residing in the United States during the 1980s. Therefore, the applicant must have been in Pakistan at the time of the conception of his two children and not residing in the United States as he claimed.

The inconsistencies in the record call into question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since January 1, 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.

The record includes a letter of employment from [REDACTED] in Manorville, Long Island, New York, dated March 27, 1990, stating that the applicant was employed from March 1, 1981 to January 31, 1986, as a harvest worker picking tomatoes, eggplants, peppers, potatoes and cabbage. [REDACTED] stated that the applicant was paid \$100.00 per month and was provided room and board at the farm. Also in the record is an affidavit from [REDACTED] of Metro West End Marketing Corporation in Westhampton Beach, New York, sworn to on April 4, 1990. [REDACTED] stated that the applicant was employed from 1986.

The employment letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because while the letter from [REDACTED] provided a description of the applicant's duties and responsibilities, the affidavit from [REDACTED] did not. The affidavit from [REDACTED] did not indicate whether the information about the applicant's employment was taken from company records. Both did not indicate where the records are kept and whether such records are available for review. The employment documents were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment documents have little

probative value. They are not persuasive evidence that the applicant resided in the United States before January 1, 1982 through the requisite period.

As for the affidavits in the record from individuals who claim to have known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant’s life in the United States and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants’ personal relationships with the applicant in the United States during the 1980s. In addition, some of the affidavits have questionable credibility. While the affidavits from [REDACTED] and [REDACTED] were supposedly signed on April 4, 1990 and April 3, 1990, respectively, the affidavits were not notarized until July 23, 2001 by the same notary. This information casts considerable doubt as to when the affidavits were authored and the credibility of the documents. Furthermore, the originals of these two affidavits are not in the file for proper verification. As previously stated, 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, id.* For the reasons discussed above, the employment documents have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

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.