

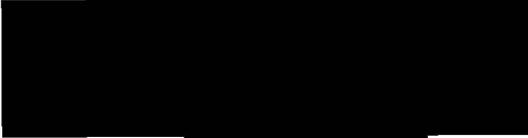


U.S. Citizenship
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FILE:

MSC-05-216-11526

Office: NEW YORK

Date: **OCT 20 2009**

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

Perry Rhew
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 (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 (together comprising the I-687 Application). In adjudicating the application, the director noted that a letter dated January 11, 1982 from New York Telephone Company appeared to have been deceitfully created to satisfy the residence requirement. The director further found that none of the evidence purporting to attest to the applicant's residence in the United States during the requisite period was either credible or amenable to verification. Based on these findings, the director determined that the applicant had failed to meet his burden of proving that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States throughout the requisite period.

On appeal, the applicant maintains that he is eligible for temporary resident status pursuant to Section 245A of the Act and further contends that he has submitted sufficient credible evidence to meet his burden of proof.

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)(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).

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. 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, "[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.

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 (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 primary issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and that he has resided continuously in the United States throughout the requisite period.

To show that he has resided continuously in the United States since before January 1, 1982, the applicant submitted numerous documents including photocopies of various receipts received in 1982, 1985, and 1987; a photocopy of a letter dated January 11, 1982 from New York Telephone Company; a photocopy of a lease document; and eight letters from various social organizations and companies.

The letter dated January 11, 1982 from New York Telephone Company bears a logo "A NYNEX Company." Upon review, the director found and noted in his notice of intent to deny (NOID) that the logo A NYNEX Company did not appear on the company's telephone bills and documents until January 1986. Based on this finding, the director concluded that the letter must have been deceitfully created to satisfy the residence requirement. In response to the director's NOID and on appeal, the applicant claims that the letter was not a telephone bill and that it is possible that the New York Telephone Company might have already used that specific logo before 1986 in its general correspondence. No additional evidence, however, has been submitted to substantiate the applicant's claim or to resolve the discrepancies in the evidence as noted by

the director. 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 applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The AAO agrees with the director that this evidence is not credible and not probative as evidence of the applicant's presence in the United States during the requisite period.

The applicant submitted photocopies of various receipts received in 1982, 1985 and 1987 as evidence of his residence in the United States during the requisite period. The director held that these receipts were not probative since none of the companies that issued these receipts could be contacted. According to the director, the telephone numbers on the receipts either did not correspond to the companies that issued the receipts, or they had been disconnected. On appeal, the applicant provides no specific explanation or rebuttal to resolve the problem as noted by the director. The AAO agrees with the director that the receipts are not probative as evidence of the applicant's residence in the United States during the requisite period.

Similarly, the director found that the letters from Islamic Center of New York, Muslim Community Center of Brooklyn, Inc., Acme Cleaners, Shalimar of India Restaurant, Habib Bank Limited, Adams Hotel, Office Furniture Outlet, and Astoria Hardware and Paint Co. were not credible and not probative because none of these social organizations and companies appeared to exist. Upon review, the director found that none of these social organizations and companies was listed in the public record. The director also found that many telephone numbers listed on the letters did not belong to the stated organizations and companies. On appeal, the applicant states that the letters should have been given substantial weight, because if certain businesses do not exist today and that they no longer can be contacted, the benefit of the doubt should have **been given to the applicant. The AAO disagrees. As stated earlier, the burden is on the applicant** to establish by a preponderance of the evidence that he resided continuously and was physically present in the United States during the requisite periods. 8 C.F.R. § 245a.2(d)(5). Here, the applicant fails to provide additional evidence to show that the stated organizations and companies did exist and that he was a member or employee during the various periods specified in the letters.

The AAO further notes that none of the companies purporting to employ the applicant during the requisite period follows the specific guidelines as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the companies fail to include in their letters the address or addresses of the applicant at the time of his employment, the exact period of his employment, his duties with the companies, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. Similarly, the letters from the Islamic Center of New York and the Muslim Community Center of Brooklyn, Inc. do not contain specific details about the applicant's membership in their organizations as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). The authors of the letters do not specifically state the inclusive

dates of the applicant's membership, the address or addresses where the applicant resided during his membership period, how the authors know the applicant, and where they acquired the information relating to the applicant's membership in their organizations. The letters mentioned above will be given no weight as they do not comply with the regulations and as the applicant has failed to prove that he was a member of the stated organizations or an employee of the stated companies.

The applicant submitted a photocopy of his lease agreement as evidence of his residence in the United States during the requisite period. The director noted that the lease agreement only covered a two-year period from December 1984 to December 1986, inconsistent with the applicant's claim that he resided at the same address from 1981 to 1988. Further, the director stated that the applicant failed to submit other corroborating documents such as utility bills or rent receipts to support his claim that he lived in the same address from 1981 to 1988. In light of the unexplained inconsistencies, the AAO agrees with the director that the lease agreement alone is not sufficient to establish the applicant's residence in the United States during the requisite period.

The applicant also submitted two affidavits as evidence of his eligibility for the benefit sought. [REDACTED] and [REDACTED] both claim in their affidavits that they have known the applicant since 1981, but neither described with any detail how he first met the applicant in the United States or how he dates the beginning of his acquaintance with the applicant in 1981. Neither states where the applicant lived and worked or what the applicant did with his time during the requisite period. Simply stating that the applicant has lived in the United States since before January 1, 1982 without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish the applicant's continuous residence in the United States throughout the requisite period. 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. The lack of detail in the affidavits is significant, considering that both affiants claim they have known the applicant since 1981. The affidavits will be given nominal weight.

[REDACTED] issued a letter stating that the applicant had been his patient since January 10, 1986. The applicant, along with [REDACTED] letter, submitted a lab report dated February 6, 1987. The director found that neither the letter nor the lab report was verifiable because neither [REDACTED] nor the lab could be contacted. Additionally, the AAO observes that [REDACTED] fails to identify the source of the information he attested to and submits no medical records. Both the letter and the lab report will be given nominal weight.

The applicant was fifteen years old in December 1981. No school, medical, or immunization records have been submitted. The applicant additionally fails to provide any evidence from a

responsible caregiver who cared for the applicant when he was a minor. Taken individually and collectively, the AAO agrees with the director that the evidence submitted in this proceeding does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and that he has continuously resided in the United States throughout the requisite period.

The noted inconsistencies coupled with the lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract from the credibility of his claim. 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 amenability to verification. Given the lack of credible supporting documentation and the inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.