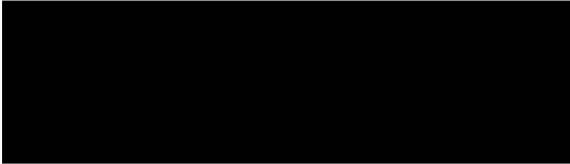


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Services

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FILE: MSC 04 287 10037 Office: NEW YORK Date: SEP 03 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. 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.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) failed to weigh the evidence already submitted. Counsel also states that the applicant did not have an opportunity to rebut the proposed reasons for denial as he was not in receipt of the director's notice of intent to deny (NOID). The record reflects that the NOID was sent to the applicant at his address of record and was not returned to United States Citizenship and Immigration Services. The AAO finds without merit the applicant's claim that he did not receive the NOID. Further, the applicant has had the opportunity to rebut the director's reasons for the denial on appeal. Counsel states that the applicant submitted evidence with the appeal to support his claim of having been in the United States since 1979.

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-*, 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 submitted sufficient credible evidence to meet his burden of establishing that he (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 1, 1982 and lived in an unlawful status during the requisite period consists of notarized statements 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 USCIS adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview, the applicant claims to have entered the United States in December 1979 by ship in New York. In the applicant’s notarized statement dated July 8, 2004, filed in conjunction with his Form I-687 application, he claims that he entered the United States on March 18, 1980 per the request of some community men to teach elementary Arabic to children. The applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status that was filed in conjunction with Form I-130, Petition for Alien Relative, and the Form I-130 indicate that the applicant entered the

United States without inspection in 1985. The applicant's Form I-485 LIFE application indicates the applicant entered the United States without visa and inspection on July 16, 1983 in New Jersey.

The applicant's Form G-325A, Biographic Information, filed in conjunction with Form I-485 and Form I-130 and signed by the applicant on January 12, 1998 indicates that the applicant resided at [REDACTED], from 1985 to 1994. Another Form G-325A filed in conjunction with the applicant's Form I-485 LIFE application and signed by the applicant but undated indicates that the applicant resided in Sandwip, Chittagong, Bangladesh, from January 1950 to July 1983 and lists his address as [REDACTED], from January 1988. The Form I-687 indicates that the applicant resided on [REDACTED] in Brooklyn from March 1980 – December 1985, and at [REDACTED] in Brooklyn from January 1986 – October 2002.

The inconsistencies regarding the applicant's date and manner of entry into the United States and residences are material to the applicant's claim in that they have a direct bearing on the applicant's continuous 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).

The applicant submitted notarized statements from friends to establish his initial entry and residence in the United States during the requisite period. [REDACTED] and [REDACTED] claim that they have known the applicant since 1980, and 1981, respectively. However, upon being contacted by an USCIS officer, [REDACTED] and [REDACTED] stated that they did not know the applicant. When the officer called to speak with [REDACTED] the person who answered the phone hung up. Therefore, the information in the statements could not be verified by the USCIS and counsel offered no rebuttal statements concerning these three witnesses on appeal.

The record also contains statements from [REDACTED] and [REDACTED], who all claim to have known the applicant since 1980 and state that he resided in the United States since such date. The witnesses attest to the applicant's good moral character but do not give any other information concerning the applicant.

Upon review, the AAO finds that the statements lack the detail required to establish their credibility. The statements do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The witnesses fail to indicate any other details that would lend

credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The statements do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the witnesses had a sufficient basis for reliable knowledge about the applicant during the time addressed in their statements. 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. Therefore, the statements will be given nominal weight.

The applicant submitted a copy of a telephone bill dated December 1, 1985 and copies of statements from Chemical Bank dated June 1 - June 30, 1985, August 1 - August 31, 1985 and January 1 - January 31, 1986 that bear the name [REDACTED] and list the address as [REDACTED] Brooklyn, New York. The applicant never claims to have resided at this address on his Form I-687 application. The applicant also submits an identification card from the New York Eye and Ear Infirmary dated February 10, 1984 bearing the name [REDACTED] residing at [REDACTED]. The applicant never claims to have resided at this address on his Form I-687 application. The saving account statement book from First National Bank in the name of Mr. [REDACTED] in trust for [REDACTED] ¹ indicates that the first deposit was made on December 18, 1979. However, the Form I-485 applications contained in this record indicate different dates for the applicant's initial entry that are subsequent to December 18, 1979. The savings account book from Chemical National Bank has the name [REDACTED] written in ink and does not bear an address or any other information establishing that the book belongs to the applicant. The applicant did not provide sufficient information identifying any of this evidence as his own; the evidence does not establish the applicant's continuous residence in the United States since before January 1, 1982.

The remaining evidence consists of the original bills from the New York Telephone company dated December 13, 1986, January and October 13th of 1987 and January 13th of 1988, the applicant's social security statement indicating the applicant's earnings for 1988, a copy of the applicant's passport showing it was issued in New York on February 13, 1987, copies of bills from the New York Telephone company dated January 25, 1986, June 25, 1986, July 25, 1986, August 25, 1986, October 13, 1986, February 13, 1987, November 13, 1987, copies of statements from Chemical Bank dated January 1 - January 31, 1987, February 1 - February 28, 1987, April 30 - May 6, 1987, January 8 - February 4, 1988, February 5 - March 4, 1988 and an envelope postmarked October 20, 1986. Although this evidence suggests that the applicant was present in the United States for some part of the requisite period, an applicant applying for adjustment of status under this part has the

¹ The Form I-130 names the applicant's prior wife as [REDACTED]. The record also contains a copy of the death certificate of [REDACTED] who died on November 1, 1993. It appears that the applicant's prior spouse's name was spelled incorrectly on the statement book.

burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and inconsistencies noted call into question the credibility of the applicant's claim to have entered the United States illegally in December 1979 by ship in New York and his continuous unlawful residence in the United States throughout the requisite period. 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 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