

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

FILE:

MSC 05 194 10342

Office: NEW YORK

Date:

SEP 04 2009

IN RE:

Applicant:

APPLICATION:

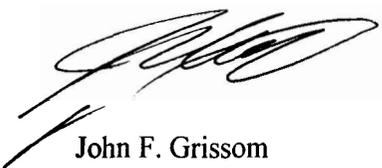
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In her Notice of Intent to Deny dated July 9, 2007, the director found that the affidavits and employment verification documents submitted by the applicant provided no credible content. The director noted that [REDACTED] the proprietor of Z.A.D. Service Station, had been contacted to verify the notarized statement that he purportedly signed on March 7, 2005 in the applicant's behalf and that [REDACTED] stated "I did not sign that affidavit. I have no knowledge of this applicant. He never worked here. This is not the first call I have gotten like this. It is fraud."

On appeal, the applicant submits over a dozen additional documents such as notarized statements from others, employment verification and affiliation and association letters and states:

My case is denied Pursuant to 8 C.F.R. 245a.2(d)(5). Neither the "NOID" nor the "NOD" does reflect the fact of my request for amendment which was submitted a long ago before the I-687 interview. Besides, the "NOD" contains numbers of errors suggesting poor process of adjudications. The CIS officer's verification with 'ZAD' casts serious doubts due to the fact that the affiant is not expected to state regarding my employment since I was never employed by the affiant [REDACTED]. The "NOID" and the "NOD" bears issues suggesting pure irrebuttable assumptions. Submitted evidence and documents received no credit at least minimum lever. In conclusion, I must address that the adjudication of my I-687 was unmistakably poor. The "brief" and the "additional evidence" shall be forwarded after I receive notice of action for my I-694 appeal petition.

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)(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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The AAO notes the following inconsistencies:

- With his initial application, the applicant submitted an employment verification letter dated March 7, 2005 from [REDACTED] Service Station, stating, in part, that the applicant worked for him. After contacting [REDACTED], the director found the letter to be fraudulent. On appeal, the applicant states “the CIS officer’s verification with ‘ZAD’ casts serious doubts due to the fact that the affiant is not expected to state regarding my employment since I was never employed by the affiant [REDACTED]” The applicant has provided no evidence to overcome the director’s finding that the letter was fraudulent. Although the applicant’s statement on appeal that he was never employed by [REDACTED] is probably true, his statement does not negate the fact that he submitted the March 7, 2005 letter stating that he was employed by Z.A.D. Service Station in support of his application.
- On appeal, the applicant submits a new set of thirteen documents for consideration. One of these documents is another employment verification letter from [REDACTED]

Manager of Calcutta Cafe in Long Island City, New York, who states that the applicant was employed by the cafe from July 1981 until July 1982. On his Form I-687, the applicant was asked to list any employment in the United States dating back to January 1, 1982. He did not list the Calcutta Cafe as an employer.

- On appeal, the applicant submits a letter from [REDACTED] team organizer and [REDACTED] Coach and Manager of the Forest Hills Soccer Club in Forest Hills, New York, who state the applicant was one of the members of "our 1987/1988 soccer team." The letter also states that the applicant was considered as one of "the best batsmen for our 1987/1988 team." The fact that the letter indicates the applicant is one of the best batsman on a soccer team detracts from its credibility. The applicant also submitted a letter from [REDACTED] of the Bangladesh Society Inc., New York, which indicates that the applicant became a member of the organization on January 5, 1985. On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list the Forest Hills Soccer Club or the Bangladesh Society Inc. New York.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted employment and affiliation histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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