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



**U.S. Citizenship  
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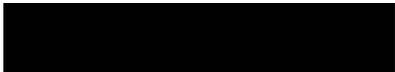
Office: NEW YORK

Date: SEP 08 2009

MSC 05 228 10133

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, 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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her 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, the applicant asserts that she has submitted affidavits and employment letters that are credible and worthy of considerable weight because they are detailed, internally consistent, and plausible. The applicant asserts that her burden of proof has been met.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 (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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A letter dated April 7, 1988, from a medical doctor, [REDACTED] who indicated that the applicant has been a patient since January 12, 1986. A medical laboratory report dated February 3, 1987, accompanied the letter.
- Several receipts dated during the requisite period and a remittance form dated March 15, 1985 from the Habib Bank Limited in New York City.
- A letter dated December 30, 1988, from [REDACTED] store manager of Backstage Hair & Etc. in Jackson Heights, New York, who indicated that the applicant was employed from January 11, 1988 to December 30, 1988.
- A letter dated December 28, 1987, from [REDACTED] assistance manager of Davla Jewelers, Inc., in New York, who indicated that the applicant was employed from April 10, 1986 to December 28, 1987.

- A letter dated December 30, 1984, from [REDACTED] kitchen supervisor of India Pavilion Restaurant in New York City, who indicated that the applicant was employed from September 7, 1984 to December 30, 1984.
- A letter dated December 24, 1982, from an assistant marketing director of Ansa Personnel Agency in New York City regarding job placements.
- A letter dated September 22, 1985, from the administrative secretary of Islamic Center of New York, who indicated that the applicant has been a member of the center since January 20, 1982.
- A letter and Certificate of Religious Instructional Course dated December 27, 1984, from [REDACTED] in Jersey City, New Jersey.
- An affidavit from [REDACTED] who indicated that she has known the applicant since 1982. The affiant attested to the applicant's residence in Brooklyn, New York from 1982 to 1987 and in Jackson Heights since 1987. The affiant indicated that she has "personal knowledge that she did various odd jobs such as kitchen help, child monitor. Jewelry store and beauty saloon etc from 1984 until 1988."
- A two-year lease agreement entered into on September 1, 1987 and an affidavit from a relative, [REDACTED] who indicated that the applicant resided with her during the requisite period at [REDACTED] in 1981, [REDACTED] from 1982 to 1987, and [REDACTED] Heights, New York from 1987 to 1997. The affiant indicated that she provided the applicant financial support.

On July 17, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the documents and affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

The applicant, however, did not respond to the notice. The director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on September 14, 2006.

The statements issued by the applicant, on appeal, have been considered. However, the AAO does not view documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application.

The affiants, in their employment letters, failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

The letter from the Islamic Center of New York has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.

█ in his letter, indicated that the medical records of the applicant were being released upon her request. However, except for the lab report of 1987, no other documentation, which would add credibility to the affiant's letter, was provided by the applicant.

The affidavit from █ does not provide detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavit from the affiant does not provide sufficient detail to establish that she had an ongoing relationship with the applicant that would permit her to know of the applicant's whereabouts and activities throughout the requisite period.

The receipts in the applicant's name from Bernie's Discount Center, Inc. (in the amount of \$1399.66 for audio equipment), Habib Bank Limited (a telegraphic transfer in the amount of \$600.00) and from Central Drugs (for prescription drugs) raises questions to their authenticity as the applicant was a minor at the time of the alleged transactions.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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