

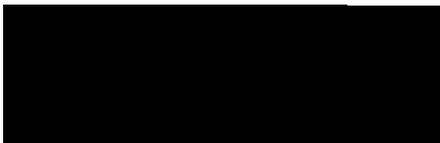
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED]
MSC 06 081 10761

Office: ATLANTA

Date:

SEP 17 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:



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, Atlanta. 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 she 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 maintains that the affidavits originally submitted show that the applicant was present in the United States before May 4, 1988. Counsel also states that the AAO does not have jurisdiction in this matter and according to the CSS/Newman Settlement Agreements, the case should be appealed to the Special Master. However, the director's decision to deny the application was based on the applicant's inability to provide sufficient evidence of her residency in the United States during the requisite period and not on the applicant's failure to establish Class Membership under the CSS/Newman Settlement Agreements. In this case, the AAO has jurisdiction over the review of the denial of an Application for Temporary Resident Status under section 245A of the Act. The adjudication of the applicant's appeal as it relates to her claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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 her burden of establishing that she (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 her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship 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 United States Citizenship and Immigration Services (USCIS) adjudicating officer's notes taken during the Form I-687 application interview and the applicant's class membership determination form reveal that the applicant claims to have entered the United States without inspection in September 1981.

The applicant's Form G-325A, Biographic Information, signed by the applicant on May 8, 2002 states that the applicant was married on April 26, 1987 in New Delhi, India. The applicant's current Form I-687 application does not list any absences from the United States and the applicant does not state when, where and how she reentered the United States after her marriage in India. Absent the length of her absence in India, the applicant might have disrupted her period of continuous physical presence in the United States. On her class membership determination form, and a previous Form I-687 application, the applicant claims that she left the United States on February 20, 1988 to visit

relatives in India and reentered without inspection on March 20 or 26 of 1988. The applicant does not list any absences in 1987 on her Form I-687 applications.

The inconsistencies in the evidence provided regarding the applicant's continuous physical presence is material to the applicant's claim in that they have a direct bearing on the length of time the applicant actually resided 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 three letters to establish her initial entry and residence in the United States during the requisite period. [REDACTED] states in her letter that she met the applicant in October, 1971 at a friend's house in Atlanta, Georgia. [REDACTED] states in her letter that she has known the applicant since July, 1981. However, the applicant claims she did not enter the United States until September 1981. [REDACTED] also states that she met the applicant in the waiting room of a hospital and since then they have been friends but she does not give the name and location of the hospital. [REDACTED] also states that the applicant took her to Athens General Hospital and was with her when her daughter was born in March, 1982. She states that the applicant baby-sat for her from May 1982-September 1983. This conflicts with the previous Form I-687 application where the applicant claims she worked as a stitcher from November 1981 to September, 1986, and the current Form I-687 where it states the applicant didn't start babysitting until 1987.

[REDACTED] states that the applicant and her husband, [REDACTED] were residing at [REDACTED] when they bought merchandise from his company from March, 1986 to November, 1989. However, the applicant claims on her Form I-687 application, at item 30, that she resided at [REDACTED] from January 1987 to December 1989. The record does not explain the inconsistencies. *Matter of Ho, supra*.

The letters do not include sufficient detailed information about the claimed relationship spanning from 27 to 38 years and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about her family members, hobbies, and shared activities. The letters 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 letters do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the 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 letters will be given nominal weight.

In the applicant's previous Form I-687 application, she claims she was employed as a stitcher from November 1981 to September 1986. In the current Form I-687 application, the applicant states she was self-employed as a babysitter in New York from March 1987 to December 1989. The applicant does not list any employment prior to March 1987.

The letter signed by [REDACTED] secretary of the Sikh Study Circle, Inc., Stone Mountain, Georgia, states that he has personally known the applicant and that the applicant attended the Sikh temple in October, 1981, at Singleton Community Center. [REDACTED] states that the applicant participated in weekly religious ceremonies and other Sikh community activities. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter from [REDACTED] does not contain most of the aforementioned requirements. Moreover, the applicant does not claim to be a member of this organization on either of her Form I-687 applications. The evidence will be given nominal weight.

An applicant applying for adjustment of status under this part has the 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). Considering the lack of detail in the evidence and the inconsistencies noted above, the applicant has not established her continuous residence in the United States since prior to January 1, 1982 and throughout the requisite period. Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.