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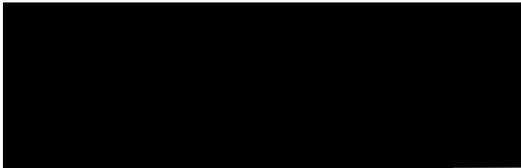
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

41



FILE:



MSC 05 225 11115

Office: NEW YORK

Date:

SEP 29 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. The file has been returned to the National Benefits Center. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel for the applicant submits a brief and additional documentation.

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).

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).

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 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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he resided in the United States for the duration of the requisite period.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on May 13, 2005. In support of the application, the applicant submitted a photocopy of a Form I-687 previously submitted in March 1992 and documentation that accompanied that application including: an employment letter (including a work schedule) from [REDACTED] stating the applicant had been employed from December 1, 1980 to August 31, 1984; an employment

letter from Excellent Headwear Corp., stating the applicant had been employed from November 1984 to January 1986; an employment letter from Metro East End Marketing Corp. stating the applicant had been employed part-time since 1986; a letter from the Islamic Community in Brooklyn stating the applicant had been a member from July 1984 to October 1987; a letter from Pubali Travel & Tours stating the applicant purchased an airline ticket from New York to Pakistan on October 9, 1987; an affidavit from [REDACTED] stating he had known the applicant for many years and went with him to the United States Citizenship and Immigration Services (USCIS), formerly Immigration and Naturalization Services (INS) office in New York in November 1987; and, an affidavit from [REDACTED] stating she met the applicant in 1981 when he was working at [REDACTED]. The applicant also submitted new affidavits, dated in 2005, from [REDACTED] stating he met the applicant in 1982, and [REDACTED] stating he met the applicant in 1986.

The applicant was interviewed in connection with his application on March 2, 2006. On May 18, 2007, the director issued a Notice of Intent to Deny (NOID) the application. In the NOID, the director noted that [REDACTED] had been contacted and stated that he had not issued the employment letter provided by the applicant and did not know him. The director also noted that the affidavits submitted did not include identification, contact phone numbers, or any proof that the applicant were present in the United States throughout the time periods attested to and that they bore a striking resemblance to numerous other affidavits from those entities, affiants, and notaries presented by other applicants, thereby suggesting that the documents were altered, misused, forged, and/or fraudulent. Furthermore, the director noted that the record reflected that on April 10, 1998, the applicant was interviewed at John F. Kennedy International Airport in New York, at which time he stated he entered the United States for the first time about fifteen years ago (in 1983) and had two children born in Pakistan who were ten and twelve years old. The director found these discrepancies called into question the applicant's credibility regarding his claims of having initially entered the United States in December 1980 and to have only departed on one occasion in 1987.

The director afforded the applicant 30 days in which to respond to the NOID. The applicant failed to respond. Therefore, on June 25, 2007, the director denied the application.

The applicant, through counsel, filed an appeal from that decision on August 14, 2007. On appeal, counsel resubmits the previously provided documentation from [REDACTED] and two additional affidavits, dated on August 3, 2007, from [REDACTED] and [REDACTED], with additional documentation identifying the affiants. On appeal, counsel does not address the issues raised by the director in the NOID concerning [REDACTED] statement when contacted that he did not issue the aforementioned employment letter or the applicant's statements at his interview at JFK in April 1998 indicating that he had initially entered the United States in or about 1983 and had been in Pakistan prior to the births of his 12 and 10-year old children (born in approximately 1986 and 1988) – contrary to his claim that he had only departed the United States on one occasion, in 1987) since his alleged entry in December 1980.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 paucity of credible documentation submitted, and the discrepancies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States throughout 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.

It is noted that the applicant was ordered removed from the United States by an Immigration Judge (IJ) on October 16, 1998. That order remains outstanding.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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