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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:

Office: NEW YORK

Date: DEC 10 2010

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.

Perry Rhew
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 of the New York office. 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 (LULAC) Class Membership Worksheet. The director denied the application, finding 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, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period.¹ The applicant has not submitted any additional evidence on appeal. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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) 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.

¹ The AAO notes that attorney [REDACTED] has filed the instant appeal on the applicant's behalf, and has provided a completed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Since [REDACTED] has been suspended from practicing before the Department of Homeland Security effective May 7, 2008, he has not been provided a copy of this decision.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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. 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 is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established 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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each

document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from the following witnesses: [REDACTED]

[REDACTED] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, 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 in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] states that the applicant lived with him at [REDACTED] from April 1, 1987 through the end of the requisite statutory period. However, the testimony of the witness is inconsistent with the testimony of the applicant in two I-687 applications, filed in May 1990 and June 1990, respectively, in which the applicant does not list any residence on [REDACTED] during the requisite period.³ Due to these inconsistencies, the testimony of this witness will be given no weight.

The applicant has submitted employment verification letters from [REDACTED] and the unidentified owner/president of Peter's Pier 74.

[REDACTED] states that the applicant worked in his newsstand, Zaman News in Brooklyn, from May 1985 through the end of the requisite statutory period. However, the applicant did not list any

³ The applicant did list a residence on [REDACTED] in the instant I-687 application. These inconsistencies undermine the credibility of the applicant's testimony concerning his continuous residence in the United States during the requisite period.

employment with [REDACTED] in two I-687 applications, filed in May 1990 and June 1990, respectively. Due to these inconsistencies, this employment verification letter will be given no weight.

In two employment verification letters [REDACTED] states that the applicant worked for his construction company in Brooklyn from May 1987 through the end of the requisite statutory period. However, in the instant I-687 application the applicant did not list any employment with [REDACTED] during the requisite statutory period. Due to this inconsistency, these employment verification letters will be given no weight.

The owner/president of [REDACTED] states that the applicant was working for the company as a busboy on November 11, 1987, the date of the letter. However, in the instant I-687 application, the applicant states that he worked for this company from 1980 to 1984. In addition, in two I-687 applications, filed in May 1990 and June 1990, respectively, the applicant states that he worked for this company from 1980 to 1985. Due to these inconsistencies, this employment verification letter will be given no weight.

Further, the employment verification letters of [REDACTED] and the representative of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily work duties, the number of hours or days he was employed, or the location at which he was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these additional reasons, the employment verification letters are of little probative value.

The record contains a witness statement from [REDACTED], [REDACTED]. [REDACTED] The witness states that the applicant consistently attended Friday prayers at the [REDACTED] since 1981. However, the applicant failed to list his association with the [REDACTED] or any other religious organization in the instant I-687 application or in two I-687 applications filed in 1990. At part 31 of the instant application, and at part 34 of the I-687 applications filed in 1990, where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. This is an inconsistency which is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. This contradiction undermines the credibility of the applicant's claim of entry into the

United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

More importantly, the witness statement does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which 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 the 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. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The applicant has submitted copies of a pay stubs from [REDACTED] dated December 20, 1980 and July 28, 1984, respectively. These documents are some evidence in support of the applicant's residence in the United States for some part of 1980 and 1984.

The record contains postmarked, metered envelopes dated January 29, 1981, June 19, 1983, December 14, 1985, June 25, 1986 and February 26, 1987, respectively. These envelopes are some evidence in support of the applicant's residence in the United States for some part of 1981, 1983, 1985, 1986 and 1987.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in May 1990 to establish the applicant's CSS class membership, and an additional I-687 application filed in June 1990. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date the applicant first entered the United States, the dates the applicant resided and worked at a particular location in the United States during the requisite period, and the dates the applicant was absent from the United States during that period.

In the instant I-687 application, the applicant listed his residences in the United States as follows: from July 1980 to May 1985 on [REDACTED] to March 1987 on [REDACTED] and, from April 1987 through the end of the requisite period on [REDACTED]. The applicant listed his employment as follows: from December 1980 to July 1984 at [REDACTED] and, from May 1985 through the end of the requisite period at [REDACTED]. The applicant listed one absence from the United States during the requisite period, from July 5, 1987 to August 13, 1987 to travel to Canada.

At the time of his interview on March 6, 2006, the applicant stated that he first entered the United States on July 5, 1980, and listed one absence from the United States from May 7, 1987 to August 30, 1987.⁴

In the initial I-687 application filed in May 1990, the applicant listed residences in the United States as follows: from September 1980 to April 1985 on [REDACTED] and, from May 1985 through the end of the requisite period on [REDACTED]. The applicant listed his employment as follows: from September 1980 to April 1985 at [REDACTED] [REDACTED] from May 1985 to June 1987 at [REDACTED] as a helper; and from September 1987 through the end of the requisite period at [REDACTED].

In a class member worksheet, filed contemporaneously with the I-687 application in May 1990, the applicant stated that he first entered the United States on September 13, 1980.

In the I-687 application filed in June 1990, the applicant listed residences in the United States as follows: from [REDACTED]; and, from June 1985 through the end of the requisite period on [REDACTED]. The applicant listed his employment as follows: from May 1980 to May 1985 at [REDACTED]; [REDACTED]; from June 1985 to April 1987 at [REDACTED] as a helper; and from May 1987 through the end of the requisite period at [REDACTED].

In a class member worksheet dated December 12, 1990, and in a statement dated June 11, 1993, the applicant stated that he first entered the United States in April 1980.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the date the applicant first entered the United States, and the dates the applicant resided and worked at a particular location, and was absent from the United States, are material to the applicant's claim in that they have a direct bearing on the applicant's 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 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.⁵

⁴ According to this version of the applicant's testimony, he was outside the United States for at least 115 days during the requisite statutory period, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain his continuous residence, unless he establishes that his prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.2(h)(1)(i)

⁵ The AAO also finds that the applicant has not satisfactorily established his identity. The record contains two copies of the applicant's [REDACTED]. The photograph of the applicant affixed to the passport on the date it was issued by the Consulate General of Bangladesh in New York on June 12, 1990, does not resemble either the photograph of the applicant affixed to the same passport when it was renewed by the Consulate General of Bangladesh in New York on May 11, 1993, or the photograph of the applicant submitted with the instant I-687 application.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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 on this basis.

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