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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



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FILE:



Office: NEW YORK

Date:

JAN 15 2010

SRC-02-207-50331

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. 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.

*Elizabeth M. Corneal*  
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, 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 (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 he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the affidavits submitted on behalf of the applicant were not credible or amenable to verification. The director also noted a discrepancy in the evidence regarding the applicant's attendance at a Buddhist temple during the requisite period. The director denied the application, finding that the applicant had not met his 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 his claim of eligibility for the immigration benefits sought. He states that the Buddhist temple was in existence during the requisite period and that he attended the temple during that time. The applicant also states that the affidavits submitted on his behalf are credible and that the affiants have direct knowledge of his existence in the United States during the requisite period.

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).

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. See 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).

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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of his I-94, Departure Records dated 1985, 1986, and 1987; his statement of account from the Manhattan Savings Bank that has stamp date entries from June 1985 through December 1988; airline records; and utility bills. Although the documents are evidence of the applicant's presence in the United States since 1985, they are insufficient to demonstrate his continuous residence since before January 1, 1982, and throughout the requisite period.

The applicant submitted the following evidence:

- An affidavit from [REDACTED] who stated that he met the applicant a few months after he entered the United States in January 1981. He further stated that the applicant has been an active devotee of the temple since then and that he has regularly attended religious services there.
  - An affidavit from [REDACTED] who stated that he has known the applicant since 1981 and that he met the applicant through his association with the Association of [REDACTED]
  - A letter from [REDACTED] who stated that he has known the applicant since 1982 and that they met through the [REDACTED]
  - Affidavits from [REDACTED], and [REDACTED] who stated that they have known the applicant since 1981
- An affidavit from [REDACTED] who stated that he has known the applicant since 1982.
- An affidavit from [REDACTED] who stated that the applicant and his family lived in his home at [REDACTED] in Reston, Virginia from September 1984 through March 1985.

These affidavits and declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Although affiants [REDACTED] and [REDACTED] indicate the applicant's affiliation with the [REDACTED] on the applicant's previous and current Form I-687 at part #34, where he was asked to list all associations and affiliations with religious groups and organizations, he indicated none. The inconsistency and contradiction casts doubt on the applicant's proof. 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. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In addition, the statement made by [REDACTED] does not conform to regulatory standards for attestations by organizations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the statement does not state the address where the applicant resided during that period, nor does it establish the origin of the information being attested to and thus its reliability.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements 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 during the time addressed in the statements. To be considered probative and credible, witness statements must do more than simply state that an affiant or declarant 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. Upon review, the AAO finds that, individually and collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submits on appeal a copy of an article highlighting the history of [REDACTED]. The article states that [REDACTED] was first established in New York in January 1981. This evidence, without more probative evidence of record, does not demonstrate the applicant's claimed continuous residence since before January 1, 1982, and during the requisite period. As has been noted, the applicant does not claim any association or affiliation with any religious group or organization on his previous or current Form I-687.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. Without more persuasive evidence to demonstrate the applicant's initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established. The applicant has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies found in the record seriously detract from the credibility of this 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 inconsistencies found in the record and the applicant's reliance on evidence with little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.