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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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[REDACTED]

FILE:

MSC-05-243-10911

Office: NEWARK

Date:

MAR 29 2010

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:

[REDACTED]

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
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, Newark. 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 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 he has established his unlawful residence for the requisite time period. He indicates that the director's decision was an abuse of discretion. He also requests a copy of the record of proceedings. This request was fulfilled on August 31, 2009.¹

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. 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 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

¹ NRC2009039191

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.

The issue in this proceeding is whether the applicant (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 his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters, handwritten receipts, lottery tickets and copies of the applicant's passport including entry stamps. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits from [REDACTED] and [REDACTED]. Although the affiants state that they met the applicant during the relevant period, their statements lack

sufficient detail to be considered probative. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. In fact, nearly all of the affidavits are exactly the same, indicating only that the affiant knows that the applicant used to live in Flushing, New York from October 1981 until November 1984 and in Sayville, New York from January 1985 until June 1988. None of the affiants indicate the basis of their knowledge of the applicant's residence. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceedings also includes copies of handwritten receipts and lottery tickets which do not contain any identifying information and which are not verifiable. Furthermore, the applicant submitted a copy of an envelope which has an illegible date stamp and which indicates that the applicant was residing at [REDACTED] in North Bergen, New Jersey. According to his Form I-687, the applicant did not reside at this address until 1989.

As noted by the director, there are also several inconsistencies in the applicant's testimony. Notably, the applicant lists only one absence during the relevant period on his Form I-687. The dates of that absence are August 1989 until October 1989. However, the applicant testified in his February 15, 2007 interview with United States Citizenship and Immigration Services (USCIS) that he departed the United States in 1985 to visit his children. The applicant also submitted a Form I-485 LIFE Act application in which he indicated that he has three children: [REDACTED] born May 27, 1980 in India, [REDACTED], born June 25, 1982 in India and [REDACTED], born March 12, 1985 in India. As noted by the director, the applicant has not submitted any evidence of his wife's trips to the United States during these periods.

The director also noted several inconsistencies with the applicant's departures during the relevant period. As noted above, the applicant did not indicate any absences during the relevant period on his Form I-687. However, the applicant submitted to the record a copy of his Indian passport issued in Ahmedabad, India on October 24, 1986. The passport also contains an amendment made at Ahmedabad on August 28, 1987. The applicant has not explained how he was issued a passport or that passport was amended during a period which he testified he was continuously present in the United States. Furthermore, the applicant obtained a United States B-1 nonimmigrant visa in Bombay, India on September 1, 1988. The applicant then entered the United States on October 12, 1988. None of these absences were listed on the Form I-687.

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. In this case, the applicant has failed to submit sufficient evidence of his residence in the United States to resolve this inconsistency in a manner that supports his eligibility. The

multiple inconsistencies noted above cast doubt on the reliability of the evidence contained in the record.

Finally, it is noted that the applicant entered the United States on October 12, 1988 using a B1/B2 nonimmigrant visitor visa. Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

An alien applying for adjustment of status has the burden of proving that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, *and is otherwise eligible for adjustment of status under this section.* 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden. Because the applicant entered the United States using a B1/B2 visa, he misrepresented his immigrant intent in order to procure admission to the United States. He is therefore, inadmissible to the United States pursuant to Section 212(a)(6)(C) of the Act. It is noted that the record contains a Form I-690 which has not yet been adjudicated. However, even if the Form I-690 were to be approved, the applicant remains ineligible for temporary residence on the basis that he has failed to demonstrate his continuous residence for the duration of the relevant period.

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.

Therefore, 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.