

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE: [REDACTED]
MSC-05-279-15359

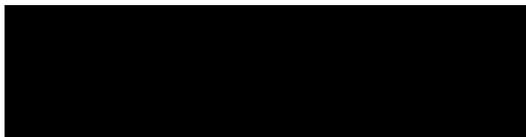
Office: NEW YORK

Date: **SEP 12 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.


Robert P. Wiemarn, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had failed to submit documents that would constitute a preponderance of evidence as to his residence in the United States. As a result, she denied the application. Specifically, the director identified inconsistencies among applications submitted by the applicant and found that the evidence submitted was insufficient to overcome these inconsistencies.

On appeal, the applicant reiterated his claim of eligibility for temporary resident status, attempted to explain the difficulty in gathering evidence after the passage of time, explained his entry into the United States, denied that there were contradictions between his applications, and attempted to explain an apparent inconsistency.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on July 6, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his only address during the requisite period to be [REDACTED] Brooklyn, New York from December 1981 to June 1989. The applicant showed his prior address to be [REDACTED] Lee Market, Karachi, Sind, Pakistan from June 1989 to July 1991. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed two trips to Pakistan during the requisite period due to his mother's illness. The applicant also listed a visit to Pakistan following the requisite period, from June 1989 to July 1991, and indicated the purpose of this trip was, "to visit family." At part #33 where applicants were asked to list all employment since entry, the applicant listed the following positions during the requisite period: waiter for India Pavilion Restaurant, New York, New York from December 1981 to December 1982; salesperson for Elite Imports Inc., New York, New York from January 1983 to December 1985; and waiter for El Inca Restaurant, Jackson Heights, New York from January 1986 to June 1988. To attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant initially provided no documentation in addition to the Form I-687 to support any aspect of his claim of continuous unlawful residence.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 6, 2006. In the NOID, the director identified inconsistencies between the applicant's Form I-687 application and his

other applications. Specifically, the director noted that the applicant submitted a Form I-485 Application for Permanent Resident Status on September 26, 1997. In connection with the Form I-485 application, the applicant submitted a Form G-325A Biographic Information signed on October 2, 1992. This form listed the applicant's last foreign address as [REDACTED], Karachi, Pakistan from March 1966 to July 1991. In response to the NOID, the applicant provided no explanation for this inconsistency. Instead, the applicant submitted three affidavits.

The first affidavit provided by the applicant, submitted by [REDACTED], states that the affiant has known the applicant for 25 years and that he met the applicant "sometime at the end of 1981." It appears that the number "5" in "25" and the second number "1" in the year "1981" have been handwritten over another number that has been covered with correction fluid, and these changes have not been initialed by the affiant. These changes call into question whether this affiant actually can confirm the applicant's residence throughout the requisite period. This affidavit also failed to provide details regarding the applicant's residence during the requisite period, such as his occupations after he left the import company where he worked until 1985 or his residence addresses. Although not required, the affiant failed to attach documentation of his identity or residence in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED]. [REDACTED] stated that he has known the applicant for about 25 years and that he and the applicant met "sometime at the end of 1981." This affidavit failed to provide details regarding the applicant's residence during the requisite period, such as his occupations after 1982, when he left the restaurant where he worked when he met the affiant, or his residence addresses. Although not required, the affiant failed to attach documentation of his identity or residence in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED]. [REDACTED] stated that he has known the applicant since 1984. This affidavit also failed to confirm the applicant's residence addresses during the requisite period. Although not required, the affiant also failed to attach documentation of his identity or residence in the United States during the requisite period.

In denying the application, the director explained that the applicant failed to submit documents that would constitute a preponderance of evidence as to his residence in the United States. The director reiterated the inconsistencies between the information provided on Form I-687 and the information contained in previous applications submitted by the applicant. The director also explained that the evidence submitted in response to the NOID was insufficient to overcome the grounds for denial explained in the NOID.

On appeal, the applicant reiterated his claim of eligibility for temporary resident status, attempted to explain the difficulty in gathering evidence after the passage of time, explained his entry into the United States, denied that there were contradictions between his applications, and attempted to explain an apparent inconsistency. In an attempt to explain the apparent inconsistency between the applicant's statements on Form G-325A and Form I-687, the applicant stated, "the person who prepared this form wrote incorrect information 'Fill in the blanks' beginning from March 1966 until July 1991. Although the applicant admits having signed this form, he did it inadvertently [not]

realizing that such a harmless error would be used against him.” This explanation is found to be unreasonable under the circumstances. There are multiple inconsistencies between the Form I-687 application and the other applications. These inconsistencies, when taken together, all tend to show that the applicant resided in Pakistan continuously from his birth until he entered the United States in 1991.

Specifically, the applicant stated in his Form I-589 application that he passed his BSC from SM Science College in Karachi in 1989 and that he was arrested on September 12, 1990. These statements are inconsistent with the applicant’s statements on Form I-687 that indicated the purpose of his visit to Pakistan in 1989 was to visit his family and that he resided in Pakistan from June 1989 to July 1991. These inconsistencies are relevant because they call into question whether the applicant actually resided in the United States prior to 1989. As already mentioned, the applicant submitted a Form G-325A dated October 2, 1992, as part of his Form I-485 application. On the Form G-325A, where the applicant was asked to list his last address outside the United States of more than one year, the applicant listed [REDACTED] Karachi-53 Sind, Pakistan from March 1966, the month of his birth, until July 1991. This inconsistency both calls into question the applicant’s claim to have resided in the United States throughout the requisite period and tends to show the applicant resided in Pakistan throughout the requisite period. In addition, on the Form G-325A where applicants were asked to list their residence for the last five years, the applicant listed only the address he had in the United States beginning in July 1991 and continuing until the date the form was signed in October 1992. If the applicant truly resided in the United States at the same address as listed on Form I-687 continuously from his entry in December 1981 until he returned to Pakistan in June 1989, then the applicant should have listed his Brooklyn, New York address on Form G-325A from October 1987 (five years prior to 1992) until June 1989. However, the applicant merely listed his United States address starting in 1991. This omission calls into question whether the applicant actually resided in the United States during the requisite period. In addition, this omission casts additional doubt on the applicant’s explanation for the inconsistencies in his paperwork. Specifically, each additional inconsistency between the applicant’s statements on Form I-687 and Form G-325A makes less reasonable the explanation that the applicant simply overlooked an error made by the individual preparing his application.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period; submitted multiple applications that conflict with Form I-687 and call into question the applicant’s claims of residence in the United States during the requisite period; and submitted affidavits that lack sufficient detail and supporting documentation to overcome these inconsistencies. Specifically, the applicant stated on Form G-325A that he resided in Pakistan from the month of his birth until 1991. The affidavits provided by the applicant all fail to list the applicant’s residences during the requisite period and are not accompanied by documentation of the affiant’s identity or presence in the United States during the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts 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 contradictory statements contained in the applicant’s I-687

application and Form G-325A, and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.