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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
MSC 04 349 10548

Office: BALTIMORE

Date: JUL 08 2008

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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, Baltimore, Maryland. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, counsel asserted that the director failed to adequately and appropriately consider all of the evidence. More specifically, counsel argued that the district director had failed to accord adequate weight to the acquaintance affidavits submitted.

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 (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)(1) 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 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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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. 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.

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 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.

On the Form I-687 application the applicant stated that he traveled to Pakistan from January 1986 to February 1986, and from June 1987 to July 1987, as well as other times after the end of the requisite period.

On a Form I-485 Application to Adjust Status submitted in a collateral matter the applicant stated that both of his children were born in Pakistan. With that application, the applicant submitted a G-325 Biographic Information form. The applicant stated on that form that he married in Pakistan during 1985, but that year was subsequently crossed out, and no other date was substituted.

The evidence in the record is described below.

- The record contains affidavits dated February 25, 2003 from [REDACTED] and [REDACTED].¹ Each of the affiants provided an address in the same apartment building in New York.

[REDACTED] stated that he met the applicant during 1982. [REDACTED] and [REDACTED] stated that they met the applicant during 1986. [REDACTED] stated that he met the applicant during 1988. All of the affiants stated that they have been good friends with the applicant since the year during which they met him, when they allege he was a street vendor, and that they have been in “constant contact” with him and “have met him on numerous occasions for meals and prayer. This office notes that none of those affidavits indicate that the applicant entered the United States prior to January 1, 1982.

- The record contains affidavits dated August 10, 2006 from those same four men, attesting to the same facts. Although the affidavits were stamped by a notary public, and the notary’s stamp contains a space for the notary to state the year during which his commission expires, the notary did not reveal that year of expiration.
- The record contains an affidavit dated April 21, 2007 from [REDACTED] of Baltimore, Maryland. That affidavit is in the same form as the others. It states that the affiant met the applicant during 1988 when the applicant was a street vendor in New York, that they have since been good friends, and that they have been in contact since then, meeting numerous times at mosque.
- The record contains a transcript of an interview of the applicant conducted on December 13, 2006 by an officer of CIS. At that interview the applicant stated that his application was prepared by an office worker in the office of [REDACTED] and that he was unaware of the contents of his application, having merely signed it as directed. At that interview the applicant also stated that he first entered the United States in July 1981. He stated that he entered Canada on a visitor’s visa, stayed a few days with a friend whose name he could not remember, and then entered the United States.

The applicant further stated, as to his absences from the United States, that he traveled to Pakistan during 1986, and that he returned after two months, during February of 1986. The applicant stated that he was married, apparently in Pakistan, during January 1986, and that children were born to him during July 1986 and during 1987. The applicant further stated that he traveled to Pakistan again from June 1987 to July 1987, as well as at other times after the period of requisite residence.

¹ Actually, although [REDACTED] dated his own signature February 26, 2003, the notary stated that the document was subscribed and sworn on February 25. This office notes that individuals may often misstate the current date by one day, and finds nothing suspicious in this circumstance.

- The record contains documents that purport to be translations of Pakistani birth registrations, showing that the applicant had a daughter born to him in Pakistan on November 11, 1986 and another daughter born on January 6, 1988.
- The record contains a LULAC/CSS Class Membership affidavit, undated except 1990, which the applicant submitted. On that affidavit the applicant indicated that he was absent from the United States visiting Pakistan from January 2, 1986 to February 2, 1986, and from June 18, 1987 to July 19, 1987, but was otherwise present in the United States since his entry on August 14, 1981.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.²

With the Form I-687 application the applicant submitted the February 25, 2003 affidavits of [REDACTED] and [REDACTED]. In a Notice of Intent to Deny (NOID), dated July 20, 2006, the director stated that the applicant failed to submit evidence demonstrating his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence. In response, the applicant submitted the nearly identical August 10, 2006 affidavits of [REDACTED] and [REDACTED].

In the Notice of Decision, dated March 30, 2007, the director denied the application based on the reasons stated in the NOID. The director also noted that, although the applicant had failed to provide a copy of his marriage certificate, the record reflects that he was married in Pakistan during 1985, during a period when he has claimed to have been in the United States, and not Pakistan. The director also noted that the applicant submitted documents showing that a daughter was born to him in Pakistan on January 6, 1988, although the applicant stated that his only absences from the United States during the period of requisite residence were January 1986 through February 1986, and June 1987 through July 1987, and a child conceived during either of those periods would be unlikely to be born on January 6, 1988.

On appeal, counsel submitted the April 21, 2007 affidavit of [REDACTED] and a brief. In the brief, counsel argued that the decision of denial was based on the applicant's "perceived lack of memory of specific details," but did not directly address the complete lack of evidence that the applicant entered the United States prior to January 1, 1982 or the discrepancies between the evidence and the applicant's claim of continuous residence in the United States.

² The record also contains the applicant's personal income tax returns for 1990 and 1992 through 2005, and some of his W-2 forms, as well as the 1996 corporate return of the applicant's pizza parlor. This office notes that those items of evidence are not relevant to the applicant's alleged continuous residence in the United States during the requisite period, as they do not relate to that period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

None of the evidence submitted even implies that the applicant was in the United States prior to January 1, 1982, a point he is required to demonstrate in order to show his eligibility. This, in itself, renders the instant application unapprovable.

Further, however, the evidence in the record raises the issue of whether the applicant's absences during the period of requisite residence may also render the application unapprovable pursuant to 8 C.F.R. § 245a.2(h)(1). The evidence shows that a daughter was born to the applicant in Pakistan on January 6, 1988. Although there is no indication that the applicant's wife, the mother of that child, ever left Pakistan, the applicant claims not to have been in Pakistan at any time during which conception could feasibly have led to a live birth on that date, an apparent discrepancy. Further, the applicant claims not to have left the United States during 1985, and yet the evidence suggests that he married in Pakistan during that year, which is another apparent discrepancy.

The evidence suggests that the applicant has not been forthcoming about his absences from the United States during the period of requisite residence. This suggests that, even if the applicant entered the United States before January 1, 1982, his subsequent absences were longer than he admits, and, if acknowledged, would render the instant applicant unapprovable. This inference is also, by itself, a sufficient basis for denying the application.

The evidence must be evaluated not by its quantity alone but by its quality. 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The application was correctly denied on this basis which has not been overcome on appeal. The appeal will be dismissed.

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