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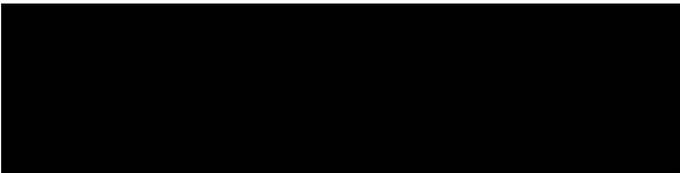
FILE: [Redacted]  
MSC 05 285 14157

Office: NEW YORK Date: JUN 09 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:



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. 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, 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, on July 12, 2005. The applicant was interviewed on August 26, 2006 in connection with his Form I-687. On July 3, 2006 the director issued a Notice of Intent to Deny (NOID) the application and on August 26, 2006 issued a second NOID. Counsel for the applicant submitted a response dated September 25, 2006. Upon review of the record, including the September 25, 2006 response, the director denied the application.

On appeal, counsel for the applicant asserts that the director did not make adequate effort or detail the attempts made to contact the affiants who submitted affidavits on the applicant's behalf. Counsel contends that the director arbitrarily raised the standard of proof and ignored the stipulated adjudication standard. Counsel claims that the director failed to consider the totality of the evidence and testimony in determining the applicant's credibility and eligibility for the benefit sought.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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 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. See 8 C.F.R. § 245a.2(d)(6).

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 has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on December 16, 2004. The applicant listed his address for the pertinent time period as ██████████ Yonkers, New York from June 1981 to July 1989. The applicant indicated he was self-employed from June 1981 to June 1987 at his home address and that he was next employed from June 1989 to July 1992 at ██████████ in Yonkers, New York. The applicant listed "none" in response to question 31 on the Form I-687 inquiring about the applicant's affiliations, organizations, churches, etc. The applicant listed numerous absences from the United States since his initial entry but only one absence during the time period between January 1982 and May 1988, an absence occurring in August 1983 to September 1983. The applicant's next absence listed is in March 1993 to April 1993.

The record also includes a previously submitted Form I-687 and a previously submitted Form I-485, Application to Register Permanent Residence or Adjust Status. Both the previously submitted Form I-687 and the Form I-485 list the applicant's children and their birth dates. The applicant indicates he has a son born August 1, 1982 in Pakistan, a daughter born March 6, 1985 in Pakistan, a second daughter born September 15, 1992 in Pakistan, and a third daughter born January 28, 1994 in Pakistan.

At the applicant's March 7, 2006 interview, the applicant indicated he first entered the United States in June 1981 on a B-2 visa with someone else's passport and overstayed his visa. The applicant also

confirms that he traveled outside the United States to Pakistan in 1983 for 35 days and that his next travel outside the United States was in 1992.

The record also includes:

- A May 14, 2005 affidavit signed by [REDACTED] who declares that the applicant is his close friend and that he knew that the applicant has lived in the United States since his arrival in the United States in June 1981; that he knew the applicant left the United States in August 1983 for Pakistan and returned to the United States in September 1983; and that since September 1983 he and the applicant have seen each other on several occasions like religious gatherings, prayers, big days (EID) and other holidays/social occasions. The affiant provides his social security statement showing earnings in the United States from 1969 to 2004, except for the 1981 year.
- An undated letter signed by [REDACTED] who states that he has known the applicant since he and the applicant lived in Pakistan; that he knows the applicant has been living in the United States June 1981 when he arrived in America; that he knows that the applicant left for Pakistan in August 1983 and returned to the United States in September 1983; and that since September 1983, he and the applicant have seen each other on several occasions like religious gathers, prayers, Big days (EID) etc., and other holidays as is common practices with friends.
- A May 13, 2005 affidavit signed by [REDACTED] who declares that he has known the applicant since 1981 and that he and the applicant entered the United States at the same time.
- A September 23, 2006 affidavit signed by [REDACTED] who declares that he has known the applicant since 1985 and that he and the applicant meet together at different occasions and have gotten together several times.
- An August 7, 2006 affidavit signed by [REDACTED] who declares that he is the applicant's friend, that he has known the applicant since 1985, and that he knows that the applicant has been a resident of the United States since 1985.
- An undated affidavit signed by [REDACTED] who declares that he and the applicant come from the same area in Pakistan, that he has known the applicant all the affiant's life, and that the applicant used to live with him as a roommate from 1982 to 1989.

The record further includes a September 4, 2001 letter written on the letterhead of the Dar Ehya Essunnah, Inc. organization and signed by [REDACTED], as the director of the organization. Mr. [REDACTED] indicates that the Dar Ehya Essunnah organization was established in 1986 and has a mosque,

conducts Friday prayers and Islamic education and Quaranic recitation. [REDACTED] states that the applicant "is personally known to us since 1981" and that the applicant has attended Friday prayers since 1986.

The AAO finds that the applicant's information submitted on the previously filed Form I-687 and Form I-485 regarding the dates of birth of his children and the dates the applicant declares he was in the United States presents inherent inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, the applicant does not describe his self-employment and does not account for any employment from June 1987 to July 1989. Further, the applicant has provided affidavits and letters that do not provide sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the document originators and their subsequent interaction and thus do not overcome the doubt cast by the applicant's inconsistent statements regarding his residence and the birth of his children during the requisite time period.

The affidavits submitted do not provide sufficient detail of the circumstances and events of the affiants' knowledge of the applicant's continuous unlawful presence in the United States for the requisite time period. The affiants indicate they have met periodically with the applicant during the requisite time period; however, the affiants do not provide any evidence of the periodic celebrations, get togethers, or other information establishing that the applicant was actually in the United States during the requisite time period. Moreover, the information provided by the affiants show that some of the affiants were not in the United States for the entire requisite time period. The affidavits lack concrete details that demonstrate sufficient contacts of the affiants with the applicant to establish the applicant's presence for the requisite period. The affidavits do not constitute sufficient evidence to conclude that the applicant continuously resided in the United States in an unlawful status for the requisite time period. Likewise, the letter submitted by [REDACTED] does not provide sufficient detail describing the circumstances of how the applicant and letter writer met in the United States and their subsequent interactions. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

The letter submitted by the Director of Dar Ehya Essunnah, Inc. organization does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) which requires that organizations submitting declarations regarding the applicant's residence provide the applicant's inclusive dates of membership in the organization, state the address where the applicant resided during the membership period, include the seal of the organization, establish how the author knows the applicant, and establish the origin of the information being provided. Moreover, the applicant affirmatively noted that he did not belong to any organizations on the Form I-687 that is the subject of this appeal.

Moreover, a review of all the evidence of the record suggests that the applicant has not been accurate regarding his whereabouts during the requisite time period. The deficient affidavits and statements, the unsubstantiated information, and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous

residence for the entire requisite period detracts from the credibility of his 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 in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

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