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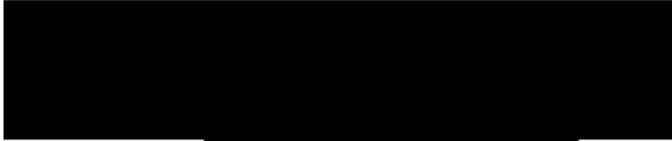
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U.S. Citizenship  
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FILE: [REDACTED] Office: NEW YORK Date: **MAR 20 2008**  
MSC-05-244-12678

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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.

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. 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 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. It is noted that the director raised the issue of class membership in the decision. Since the application was adjudicated on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant stated that he thinks he provided sufficient evidence to demonstrate his eligibility for temporary resident status. The applicant stated that he corroborated all his statements by providing witness affidavits, and that he was unable to submit official documents before 1990 because he did not have a Social Security number at that time.

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)(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).

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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 1, 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 listed the following addresses during the requisite period:

[REDACTED] Flushing, New York from July 1981 to May 1987; and [REDACTED], Brooklyn, New York from September 1987 to January 1990. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a family visit to Pakistan from May to June 1987 during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed no employment during the requisite period. At part #44 where applicants were asked to provide the signature of the person preparing the Form I-687, if other than the applicant, no signature was provided.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant provided two affidavits from [REDACTED]. The first affidavit, dated January 23, 2002, states that the applicant and the affiant lived together since 1981. The affiant listed his address as [REDACTED] Brooklyn, New York. Since this address is not listed among the applicant's addresses on the applicant's Form I-687, the affidavit does not specify the location where the affiant and the applicant resided together, and the affidavit does not specify the date when the applicant and the affiant stopped living together, this affidavit fails to confirm that the applicant resided in the United States during the requisite period. The applicant provided a second affidavit from [REDACTED] dated April 14, 2006, where the affiant identified himself as [REDACTED]. The notary stamp on this affidavit is dated April 17, 2006. The inconsistency between the date of the affidavit and the date of the notary signature casts doubt on the authenticity of the affiant's signature. In this affidavit, the affiant stated that he and the applicant lived together from 1981 to 1987, while the applicant was working construction. This information is inconsistent with the applicant's Form I-687 where the applicant failed to list any employment positions prior to 1990. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided two affidavits from [REDACTED]. The first affidavit, contains only the date of "October." The affidavit states that the affiant has known the applicant since 1981, and that the applicant has been living with the affiant since 1987. The affiant listed his address as [REDACTED], Brooklyn, New York. This information is inconsistent with the applicant's Form I-687, which indicates that the applicant lived at the [REDACTED] address from February to April of 1990. The second affidavit, dated April 17, 2006, states that the applicant has resided since 1987 as a tenant at [REDACTED]. Again, this information is inconsistent with the applicant's Form I-687, which indicates that the applicant lived at the [REDACTED] address from February to April of 1990. This inconsistency, appearing in both affidavits from [REDACTED], calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, these affidavits both fail to provide detail regarding the affiant's frequency of contact with the applicant, whether the applicant was absent for any period during his residency in the affiant's building, and whether there are any records of rent paid by the applicant to the affiant. As a result, these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided two affidavits from [REDACTED]. The first affidavit is dated September 30, 2001. However, the notary stamp on the affidavit is dated November 30, 2001. The fact that the date of the affidavit and the date of the notary stamp do not match casts doubt on the authenticity of the signature on this affidavit. The affidavit states that the affiant has personal knowledge that the applicant has been living in the United States since 1981. This affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact during the requisite period, and the region where the applicant resided during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. The second affidavit, dated April 20, 2006, states that the

affiant has known the applicant since 1981. The affiant stated that, as of that date, he has met the applicant on different occasions at parties, et cetera, and the applicant is one of the affiant's friends. The affiant stated that, according to his knowledge, the applicant is living in Brooklyn. This affidavit fails to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], in which the affiant stated that he is the president and owner of [REDACTED]. The affiant stated that, from 1985 to 1987, the applicant worked for the affiant's company as a helper. This information is inconsistent with the applicant's Form I-687, where he indicated that he was not employed in the United States prior to 1990. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, this affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided an affidavit from [REDACTED], which states that the affiant has known the applicant since December 1985 and knows the applicant has been a continuous resident of the United States since then. The applicant is a friend of the affiant. This affidavit fails to include details regarding how the affiant met the applicant, their frequency of contact during the requisite period, and the region where the applicant resided during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED]. This affidavit fails to confirm that the applicant resided in the United States during the requisite period.

In a Notice of Intent to Deny (NOID) issued on March 24, 2006, the director identified an apparent inconsistency related to statements made by the applicant. The director explained that the applicant had stated in his interview with an immigration officer on March 1, 2006 that he initially entered the United States in July 1981. The applicant had stated that he left the United States only one time during the requisite period, when he returned to Pakistan for one month in May 1987. It is noted that the applicant's Form I-687 indicates the applicant did not depart the United States between June 1987 and July 1995. The director indicated the applicant had stated that his wife had never come to the United States, that he had had a child by his wife, and that the child was born in Pakistan in 1989. The director requested that the applicant explain the inconsistencies among the applicant's claims that he did not depart the United States between 1987 and 1989, that his wife was not present in the United States during that time, and that his child was born in Pakistan in 1989. The director also stated that the applicant had indicated in his interview with an immigration officer that he worked in construction between 1982 and 1988, yet the applicant's Form I-687 indicated that the applicant's initial employment in the United States began in February 1990.

In an attempt to explain the apparent inconsistencies raised by the director in the NOID, counsel for the applicant stated that the applicant does not have a child born in 1989, and the director's conclusion may have been a misreading of the Form I-485 application submitted by the applicant. Counsel also stated that the individual who prepared the applicant's Form I-687 left out the applicant's employment information for the requisite period. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record indicates the applicant stated in his interview with an immigration officer on March 1, 2006 that he has three children born in Pakistan in 1981, 1989, and 1998. The inconsistency raised by the director regarding the birth of the applicant's child is relevant in that it calls into question the applicant's response on his Form I-687 application regarding his periods of absence from the United States during the requisite period. The applicant's response to the request for him to list all absences from the United States since entry is relevant to the determination of whether he resided in the United States continuously throughout the requisite period. The applicant failed to overcome the inconsistency regarding the birth of his child by providing his children's birth documentation or other independent documentation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Since the applicant failed to provide independent evidence confirming the years of his children's births, he is found not to have overcome the inconsistency identified by the director. This inconsistency casts some doubt on the applicant's claim to have been absent for only one month during the requisite period.

In addition, as stated above, the applicant failed to indicate on Form I-687 that another individual prepared the application for him. This casts doubt on counsel's claim that information regarding the applicant's employment during the requisite period was omitted due to preparer error. Since the applicant failed to provide an explanation or independent evidence to clarify the inconsistency raised by the director regarding the applicant's employment during the requisite period, the applicant is found not to have overcome this inconsistency. This casts additional doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The record contains an additional Form I-687 signed by the applicant on April 1, 1990. This application is inconsistent with the current Form I-687 application in that it indicates that the applicant resided at the [REDACTED] address from July 1981 to August 1987 rather than from July 1981 to May 1987 as indicated on the current Form I-687. The 1990 Form I-687 also indicates that the applicant lived at [REDACTED], Brooklyn, from September 1987 to January 1990, although the current Form I-687 fails to list this address. In addition, the 1990 Form I-687 indicates that the applicant was a construction worker from August 1981 to August 1987 and a helper at Kemach Food Products from September 1987 to January 1990. However, neither of these

positions is listed on the current Form I-687. These inconsistencies call into question the applicant's claim to have resided in the United States during the requisite period.

In denying the application, the director found 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 stated that he thinks he provided sufficient evidence to demonstrate his eligibility for temporary resident status. The applicant stated that he corroborated all his statements by providing witness affidavits, and that he was unable to submit official documents before 1990 because he did not have a Social Security number at that time.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. He has submitted attestations that fail to confirm that he resided in the United States during the requisite period, are inconsistent with his Form I-687, fail to conform to regulatory standards, or lack sufficient detail to confirm that he resided in the United States during the requisite period. The first affidavit from [REDACTED] the second affidavit from [REDACTED], and the affidavit from [REDACTED] fail to confirm that the applicant resided in the United States during the requisite period. The second affidavit from [REDACTED] and the affidavits from [REDACTED] are inconsistent with the applicant's Form I-687. The first affidavit from [REDACTED] and the affidavit from [REDACTED] lack sufficient detail. The affidavit from [REDACTED] is inconsistent with Form I-687 and fails to conform to regulatory standards.

The absence of sufficiently detailed 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 applicant's contradictory statements on his applications and his 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 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.