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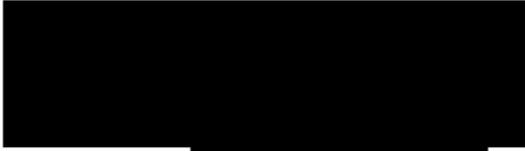
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: MSC-05-223-10171

Office: NEWARK, NEW JERSEY

Date: **MAR 21 2008**

IN RE: Applicant:



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: Self-represented

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, Newark, New Jersey. 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director did not have good and sufficient cause to deny the application.

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 or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant was born on April 15, 1972 in Pakistan.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 11, 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 her first address in the United States to be at [REDACTED] Long Island City, New York from December 1981 to July 1987. Similarly, at part #33, she showed her first employment in the United States to be for [REDACTED] at [REDACTED], New York, New York, from January 1983 to December 1984 (at the ages of 11 to 12).

The applicant submitted the following relevant documentation in this matter:

The first page of a residential lease agreement dated December 8, 1981, listing [REDACTED] and the applicant, (age nine years), as tenants for [REDACTED], Long Island City, New York. There is no explanation why the complete lease was not submitted nor why a juvenile (the applicant) was included as a tenant and obligor on the lease.

- A certificate of completion dated December 28, 1984, from the Islamic Center of New Jersey certifying that the applicant completed a Muslim religious instructional course between February 1982 to December 1984 signed by [REDACTED], board member.
- A letter from [REDACTED] stating that the applicant has been treated by that physician since May 7, 1982. Since the date of treatment by [REDACTED] was after January 1, 1982, it cannot be evidence of the applicant's presence in the United States prior to that date. Further, the physician's letter was not accompanied by medical records and therefore is unsubstantiated.
- A wedding invitation having the applicant's hand printed name and address held on May 20, 1982. Since the date of the wedding was after January 1, 1982, it cannot be evidence of the applicant's presence in the United States prior to that date. Further the applicant did not present evidence such as photographs that she attended the wedding on that date.
- Copies of the applicant's passport pages.

The applicant submitted the following additional documentation:

- An affidavit from [REDACTED], of Jersey City, New Jersey, made April 28, 2005, that he has personal knowledge that the applicant arrived in the United States in December 1981 and resided with her uncle [REDACTED] in Long Island City, New York.
- An affidavit from [REDACTED], of Jersey City, New Jersey, made May 2, 2005, that he has personally knows that the applicant arrived in the United States in December 1981 and resided with her uncle [REDACTED] in Astoria and Sunnyside, New York. He also stated that he knows that that the applicant worked in a beauty salon, as a baby sitter, and in a jewelry store in New York from 1981 to 1988.

The above affidavits do not provide detail regarding how and when the applicant and the affiants met; their frequency of contact during the requisite period; and the applicant's address during the requisite period. While not required, the affiant failed to submit proof that the affiant was in the United States during the requisite period or an explanation and proof of the relationship between the affiant and the applicant. The affidavits lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

- An affidavit from the applicant's father, [REDACTED], made January 19, 2006, detailing the situation in which his family that included the applicant were in Pakistan, that his relative [REDACTED] residing in the United States took care of his daughter when she entered the United States in December 1981, and that the applicant traveled to Pakistan in 1987 and in 1994.
- An affidavit from [REDACTED], of Jersey City, New Jersey, made April 30, 2005, that he has personal knowledge that the applicant arrived in the United States in December 1981 and resided with him in Long Island City, New York. [REDACTED] stated that the applicant left the country and returned in 1987 and that the "INS refused to accept her completed file during the

application period.”¹ [REDACTED] stated that he provided financial support for the applicant and she was employed as a child monitor, as kitchen help, worked in a beauty salon, jewelry salon, and had other odd jobs in New York.

The above affidavits from the applicant’s father, residing in Pakistan, and the applicant’s relative termed her “uncle” because of the filial relationships cannot be considered to be independent objective evidence of the applicant’s 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.

The director denied the application for temporary residence on September 23, 2006. In denying the application, the director found that the applicant's evidence submitted that included, inter alia, a wedding invitation for [REDACTED] and [REDACTED] having the applicant’s hand printed name and address held on May 20, 1982, the first page of a residential lease agreement dated December 8, 1981, and a certificate of completion dated December 28, 1984, from the Islamic Center of New Jersey (Rehan Mosque), a letter from [REDACTED] stating that the applicant has been treated by that physician since May 7, 1982 were not supported by corroborative evidence although on February 8, 2006, in a NOID issued by the director, the applicant was requested to submit credible documentary evidence.

On appeal the applicant cites several federal court cases in support of her contentions. These are *Martinez-Sanchez v. INS*, 794 F. 2d 1396, 1400 (9th Cir. 1986), *Aguilera-Cota v. U.S. INS*, 914 F. 2d 1375, 1381 (9th Cir. 1990) and *Vilorio-Lopez v. INS*, 852 F. 2d 1137 (9th Cir. 1988), *Bolanos-Hernandez v. INS*, 749 F. 2d 1316 (9th Cir. 1984), *Addington v. Texas*, 441 U.S. 418, 425 (1979), and *United States v. Mastrangelo*, 561 F. Supp. 1114, 1120 (E.D.N.Y. 1983).

We note that the AAO is not bound to follow the published decision of a United States district court, even in matters which arise in the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law.

The applicant cites *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) for the contention that the applicant’s testimony cannot be rejected solely because it may be viewed as self-serving. Nowhere in this deportation proceedings case is that contention put forth but rather the Board held that the alien in that case must meet his evidentiary burdens of proof and persuasion as to the facts, and he must meet the statutory standards of eligibility set out by the pertinent provisions in the Act.

The applicant further asserts that that if the affidavits submitted in the case are credible and verifiable, are sufficient to establish the facts at issue, and if there is no adverse information, the application must be approved. In the present case, the initial evidence submitted by the applicant was not corroborated

¹ It was not explained how the applicant at the age of 15, separated from her parents residing in Pakistan, could have submitted an application. There is no evidence submitted that [REDACTED] was the applicant’s guardian.

with supporting relevant evidence as requested in the NOID. As enunciated above, 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 applicant cites *Matter of C*, 19 I&N Dec. 808 (Comm. 1988) for the proposition that the director may not apply standards that are more severe than 'standards contemplated by the Congress.' *Matter of C* concerned the issue of "emergent reason" for the purpose of determining continuous residence under 8 C.F.R. § 245a.1(c)(1)(i) (1988). The applicant's citation of *Matter of C* is misplaced in this matter. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. *Matter of E-M-*, 20 I&N Dec. at 80.

On appeal, the applicant asserts that she did arrive in the United States in 1981, along with her father. There is nothing in the record of proceeding other this statement on appeal to indicate that the applicant was accompanied by her father when she reputedly entered the United States in 1981 at the age of nine.

According to the applicant's appeal statement "during the course of her employment between 1981 until 1988" she received her salary in cash. The applicant has stated that her first employment in the United States for the [REDACTED] at [REDACTED], New York, New York from January 1983 to December 1984. It is noted that the applicant was only 11 years old in 1981.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for her own admittedly inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 he has failed to establish by a preponderance of the evidence that he has 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.