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**U.S. Citizenship
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FILE: [REDACTED]
MSC-06-088-11430

Office: CHICAGO

Date: **MAY 22 2006**

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 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 "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, Chicago. 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. Specifically, the director stated there were inconsistencies between what he showed on his Form I-687 and his testimony at the time of his interview with a Citizenship and Immigration Services (CIS) officer regarding his employment in and absences from the United States during the requisite period. The director stated these inconsistencies caused him to fail to meet his burden of proving that he resided in the United States 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.

On appeal, the applicant submits a brief in support of his application through his attorney. He asserts that the discrepancies noted by the director in his decision were minor. He further states that the director did not address all of the evidence submitted by the applicant in support of his 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) 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 record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 22, 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 address in the United States during the requisite period to be [REDACTED] in Houston, Texas from October 1981 until November 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period, from September to October 1987 when he went to Pakistan for a family emergency. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he

showed that during the requisite period, he was employed as a salesman at the Southwest Freeway Common Market in Houston, Texas from November 1981 until November 1989.

Also in the record is a Form I-687 submitted to establish class membership in 1990. It is noted here that the applicant showed his residence, absence from the United States and place of employment during the requisite period consistently on this Form I-687 and on that which he subsequently submitted. It is also noted that on this Form I-687 the applicant indicated he had a daughter named [REDACTED] who was born on July 14, 1987 in Karachi, Pakistan. It is also noted that on the affidavit the applicant submitted with this Form I-687, he indicated that he first entered the United States in October 1981 with a non-immigrant visa. Here, he did not indicate when his period of authorized stay ended.

The record also contains the notes from the applicant's interview with an immigration officer pursuant to his Form I-485 application. Here, the applicant indicated that he first entered the United States illegally through Texas. It is noted that this is not consistent with the affidavit the applicant submitted with his Form I-687 to establish class membership in 1990, where he stated that he entered the United States with a non-immigrant visa. These notes also indicate that the applicant married his wife in 1985 by telephone and that he left the United States for one month in 1986 when he went to Pakistan. He stated that his wife entered the United States in 1986 without a visa near Eagle Pass, Texas. He also stated that she entered the United States either for the first time or for the second time after his daughter was born in 1987. Here, the record shows that the applicant's testimony was not consistent regarding how many times his wife entered and whether her first entry was in 1986 or in 1987.

That the applicant has been inconsistent regarding his manner of entry and the dates he was absent from the United States during the requisite period casts doubt on whether the applicant began to reside unlawfully in the United States on a date prior to January 1, 1982 and on whether he maintained continuous residence in the United States for the duration of the requisite period.

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. 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).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other

organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted the following in support of his application that are relevant to the requisite period:

Affidavits:

- An affidavit from an individual whose name appears to be [REDACTED] that was notarized on May 1, 1990. In this affidavit, the affiant states that he or she has known the applicant for eight years. Here, the affiant failed to indicate where he or she met the applicant or whether he or she met him in the United States. He or she further fails to indicate that he or she personally knows that the applicant resided in the United States for part of or all of the requisite period.

An affidavit from [REDACTED] that was notarized on April 29, 2005. In this affidavit, the affiant states that she has known the applicant since 1987 because he resided with her and her husband from June 1987 until August 1988 at [REDACTED], in Bensenville, Illinois. It is noted here that the applicant indicated that he resided continuously in Houston, Texas from 1981 until November 1989 and did not move to Illinois until 1989 on his Form I-687. Further, the applicant did not indicate that he lived on [REDACTED] at any time during or after the requisite period on his Form I-687. This inconsistency casts doubt on the applicant's assertion that he resided in the United States for the duration of the requisite period.

An affidavit from [REDACTED] that was notarized on April 29, 2005. In this affidavit, the affiant states that he has known the applicant since 1982. The affiant goes on to say that the affiant resided with him at [REDACTED] in Bensenville, Illinois from June 1987 until August 1988. Here, the affiant noted that while the applicant was living with him, the applicant made numerous trips to Texas. It is noted here that the applicant indicated that he resided continuously in Houston, Texas from 1981 until November 1989 and did not move to Illinois until 1989. Further, the applicant did not indicate that he lived on Sunset Court at any time during or after the requisite period on his Form I-687. This inconsistency casts doubt on the applicant's assertion that he resided in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] that was notarized on April 2, 2002. This affiant asserts that the applicant worked for him part time on weekends from 1983 until 1990 at the Southwest Freeway Common Market in Houston. It is noted here that on the applicant's

Form I-687 he indicated that he began his work at this place of employment in November 1981 rather than 1983.

- An affidavit from [REDACTED] that was notarized on March 30, 2002. In this affidavit, the affiant states that he knows that the applicant was absent from the United States from September to October 1987.
- An affidavit from [REDACTED] that was notarized on April 18, 2002. In this affidavit, the affiant states that he knows the applicant was absent from the United States from September to October 1987
- An affidavit from what appears [REDACTED] that was notarized March 30, 2002. In this affidavit, the affiant states that the applicant resided with her at 18 Sunset Court in Bensenville from 1987 until 1988. She states that she met the applicant in 1987.
- A letter from [REDACTED] that was notarized on April 2, 2003. Here, the affiant states that he or she met the applicant when he visited Chicago in 1988.
- An affidavit from [REDACTED] who states that he has known the applicant in the United States since 1987. Though this letter is notarized the date is only shown as April 2 without a year indicated.

Other documents:

- An immunization record for the applicant's daughter. This record shows that the applicant's daughter, Jennifer, began receiving immunizations in the United States in 1987.

A photocopy of an envelope mailed to the applicant in Houston, Texas. This envelope was date stamped on December 12, 1987. Though this envelope is mailed to an address that is not an address at which the applicant stated he resided on his Form I-687, it is noted that the envelope was sent care of another individual. This individual is [REDACTED], the applicant's claimed employer in 1987.

- It is noted that the applicant has submitted another photocopy of an envelope that is date stamped on May 2, 1987. However, there is no visible address on this envelope, either from the sender or the recipient.

While it is noted that the applicant has submitted other documents that verify his presence in the United States subsequent to the requisite period, the issue in this proceeding is whether the applicant has met his burden of proving that he resided in the United States for the duration of the requisite period by a preponderance of the evidence. Because these documents are evidence of his residence in the United States after that period ended, they are not relevant evidence for this proceeding.

The director denied the application for temporary residence on October 12, 2006. In denying the application, the director noted that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer pursuant to his Form I-687 application, he was not consistent regarding his duties at his places of employment subsequent to the requisite period. She further stated that the applicant was not consistent regarding the dates of his absence from the United States during the requisite period. Here, the director noted that the applicant showed he was absent in September 1987 and October 1993 on his Form I-687. However, at the time of his interview with the CIS officer, he stated he left in October 1986 because his daughter was born and in 1996 because his brother was sick.

Here, the AAO notes that the record shows the applicant was granted humanitarian parole in September of 1993 and arrived back in the United States on November 6, 1993. The AAO also notes that the applicant's daughter's immunization certificate indicates that she was born on July 14, 1987, approximately nine months after an absence in October 1986 would have occurred. Therefore, though it is plausible that the applicant's wife could have become pregnant during the applicant's visit to Pakistan in October 1986, he could not have attended the birth of his daughter at that time. Because the applicant has not been consistent regarding his absences from the United States during the requisite period, doubt is cast on whether he has accurately represented the dates associated with these departures.

On appeal, the applicant's attorney argues in a brief that the interviewing officer erred in stating that there were inconsistencies between the applicant's places of employments and duties at these places of employment as stated on his Form I-687 and at the time of his interview. The brief asserts the officer did not properly question the applicant to determine all of his duties at his places of employment. He argues the inconsistencies noted by the officer pertaining to the applicant's residence and employment in the United States subsequent to the requisite period are irrelevant to this proceeding. He argues that the director's assertions that the applicant was not consistent regarding the dates associated with his absences from the United States during the requisite period is not significant. On appeal, the applicant has not presented additional evidence.

In summary, the applicant bears the burden of establishing that it is more likely than not that he resided in the United States in an unlawful manner from a date prior to January 1, 1982 and then for the duration of the requisite period. Here, the applicant has stated that he entered both illegally and with a non-immigrant visa in 1981. He has stated that he resided continuously in Texas for the duration of the requisite period and he has submitted affidavits from two individuals who state he resided with them in Chicago for part of that time. He has testified both that he had only one absence from the United States in 1986 and that this absence occurred in 1987. These inconsistencies cast doubt on whether the applicant resided continuously in an unlawful manner for the duration of the requisite period.

In this case, the absence of consistent, credible testimony and 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.