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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: FAIRFAX

Date SEP 24 2008

MSC 05 168 12076

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.

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 Field Office Director, Fairfax, Virginia. The matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, counsel asserted that the evidence in the record is sufficient to demonstrate the applicant's eligibility.

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).

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 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.

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, which the applicant signed on March 4, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that, (1) from August 1981 to December 1981 he lived at [REDACTED], (2) from January 1982 to September 1984 he lived at [REDACTED], (3) from October 1984 to April 1985 he lived at [REDACTED], (4) from May 1985 to July 1986 he lived at [REDACTED], (5) from August 1986 to April 1987 he lived at [REDACTED], (6) from May 1987 to July 1987 he lived at [REDACTED], and (7) from August 1987 to December 1994 he lived at [REDACTED].

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he was absent from the United States from November 1986 to December 1986 and from March 1988 to April 1988.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked

(1) from August 1981 to December 1982 as a gas pump and counter person at an Amoco Service Center in Long Island City, New York, (2) from January 1983 to March 1984 as a food delivery person at Al's Place in New York, New York, (3) from April 1984 to April 1985 as a counter person at the Jewel of India Restaurant in New York, New York, (4) from May 1985 to July 1987 as a sod worker for Solomon Homidas in Miami, Florida, and (5) from August 1987 to September 1989 as a counter person at Jaika Food, Inc. in Jackson Heights, New York.

Although the applicant claims to have worked in Miami, Florida from May 1985 to July 1987, he claims to have lived in Woodside, New York from August 1986 to April 1987, and in East Elmhurst, New York from May 1987 to July 1987. This office notes that both Woodside and East Elmhurst are approximately 1,300 miles from Miami, Florida.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The pertinent evidence in the record is described below.

- The record contains an affidavit, dated March 12, 2005, from [REDACTED] New York. [REDACTED] stated that he met the applicant during August 1981 and helped him get a job at an Amoco Service Center in Astoria, New York in approximately January 1982.

This office notes that the applicant claims to have worked for an Amoco Service Center in Long Island City, New York, rather than in Astoria. Further, the applicant claims to have started working there beginning during August 1981, almost upon his asserted arrival in the United States, rather than five months later.

- The record contains a form affidavit, dated February 4, 2005, from [REDACTED] of Brooklyn, New York. [REDACTED] stated that the applicant lived with him at [REDACTED] New York from October 1984 to April 1985, after which the applicant went to live in East Elmhurst. This office notes that the applicant claimed to have lived at [REDACTED]. Further, the applicant claims to have moved to North Lauderdale, Florida after leaving that address in Jackson Heights, rather than moving to East Elmhurst, New York.
- The record contains a form affidavit, dated March 2, 2005, from [REDACTED] of Jackson Heights, New York. [REDACTED] that the applicant used to live with him at [REDACTED] Florida from May 1985 to June 1985. This office notes that the applicant claimed, on his Form I-687, to have lived at that address until July 1985.

- The record contains an affidavit, dated February 1, 2005, from [REDACTED] vice president of *The Pakistan Voice*, in New York, New York. [REDACTED] attested that the applicant has been a member of *The Pakistan Voice* since March 20, 1982 and that his membership card states that he has resided in the United States since August 1981. This office observes that according to its website at <http://thepakistanvoice.com/>, accessed September 24, 2008, *The Pakistan Voice* is a newspaper serving the New York area Pakistani Community. Why a person would have a membership card with a newspaper showing the date he began living in the United States is unclear to this office.
- The record contains a declaration, dated May 19, 2008, from [REDACTED] of Woodside, New York. The affiant stated that the applicant came to New York from Pakistan during 1981, and worked at Balaka Indian Restaurant between 1981 and 1982. This office notes that the applicant did not state, on his ostensibly exhaustive history of his employment in the United States, that he had ever worked as a dishwasher or that he had ever worked at that restaurant.
- The record contains a declaration, dated May 20, 1993, from [REDACTED], manager of the [REDACTED] Indian Restaurant, of New York, New York, on that company's letterhead. Mr. [REDACTED] stated that the applicant worked as a weekend dishwasher at that restaurant from December 1981 to November 1982. This office notes that, as was stated above, the applicant did not claim, in the employment history he provided on the Form I-687, ever to have worked at that restaurant.
- The record contains an undated declaration from [REDACTED] which states that Mr. [REDACTED] is both a farm labor contractor and owner. That declaration states that the applicant worked for [REDACTED] from May 1, 1985 to July 31, 1986. [REDACTED] address and phone number were not provided with that declaration. This office notes that the applicant claimed, on his Form I-687 application, to have worked for [REDACTED] until July 1987.
- The record contains a declaration, dated May 20, 2008, from [REDACTED], of Woodside, New York. [REDACTED] stated that he has known the applicant since the applicant worked in the Amoco Service Station at [REDACTED] beginning in August 1981. This office notes that, on the Form I-687 application, the applicant stated that the service station is at [REDACTED]

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

In a Notice of Intent to Deny (NOID), dated May 1, 2008, the director stated that the applicant failed to submit evidence sufficient to demonstrate 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 to the NOID counsel submitted the May 20, 2008 letter from [REDACTED] the May 19, 2008 letter from [REDACTED] and the May 20, 2008 letter from [REDACTED] all of which are described above. In the Notice of Decision, dated June 18, 2008, the director denied the application based on the reasons stated in the NOID.¹

On appeal, counsel submitted additional copies of some of the documents previously submitted. Counsel submitted no new evidence. Counsel argued that the evidence in the record is sufficient to demonstrate the applicant's eligibility.

The employment verification letter of [REDACTED] does not contain [REDACTED] address or phone number. As such, it is not readily verifiable and would be accorded only minimal evidentiary weight.

The employment verification letter of [REDACTED] does not state the applicant's address at the time of the alleged employment, does not state whether any periods of layoff existed, and does not state whether the information provided was taken from company records and whether such records are available for inspection, or, in the alternative, why no such records are available. The letter from [REDACTED] does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i). It will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), but will not be accorded as much evidentiary weight as it would have had it complied with the governing regulations.

The employment verification letter of [REDACTED] however, in addition to not complying with 8 C.F.R. § 245a.2(d)(3)(i), contains another, even more serious, flaw. That letter states that no permanent record exists of the applicant's employment, but [REDACTED] attests that the applicant worked 113 days, without explaining his ability to recall the exact number of days that the applicant worked during that period. This office does not find those two assertions, taken together, to be credible. The employment verification letter of [REDACTED] will be accorded no evidentiary weight.

The assertion in the affidavit of [REDACTED] of *The Pakistan Voice*, that the applicant would for some reason possess a membership card related to that newspaper that would show the date he entered the United States, is simply implausible. That affidavit will be accorded minimal evidentiary weight.

The declarations of [REDACTED] all purport to have been signed and stamped by a notary public. However, those ostensible notaries did not indicate that they administered oaths to the affiants. As such, those declarations are not affidavits and will not be accorded the additional evidentiary value accorded to affidavits and other

¹ In addition to his finding that the applicant failed to demonstrate his entry into the United States prior to January 1, 1982 and continuous residence in the United States throughout the requisite period, the director also made several observations pertinent to the National Security Entry Exit Registration Systems (NSEERS) program and whether the applicant was obliged to register pursuant with that program. This office will not rely on that aspect of the director's decision.

sworn documents. Further, that those ostensible notaries either neglected to attest to the documents or are unfamiliar with the standard form of a notary's attestation suggests that the people who signed those documents claiming to be notaries are not, in fact, notaries. This irregularity further reduces the evidentiary value of the declarations of [REDACTED]. The evidentiary value of the employment verification letter from Salomon Homidas cannot, of course, be further reduced.

Information in the affidavits and declarations of [REDACTED] Restaurant and [REDACTED] conflicts with information the applicant provided on his Form I-687 application. The evidentiary value, not only of that evidence, but of all of the applicant's evidence is greatly diminished by those conflicts. The applicant's evidence can be accorded only minimal evidentiary value.

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.

The evidence must be evaluated not by the quantity of evidence 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. 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.