U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L1

FILE: [redacted] Office: NEWARK Date: DEC 21 2007

MSC 05 252 13302

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. 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, 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, and 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 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, counsel for the applicant asserts that the applicant has lived in the United States since July 1987 and contends that the applicant has furnished evidence in support of his claim.

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 (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. *See* 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.

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 (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 demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. In support of the claim, the applicant submitted the following:

1. An undated employment letter from [redacted], owner of United America Association, claiming that the applicant was hired to work for his company in January 1988.

2. An undated employment letter from [redacted], owner of [redacted] claiming that the applicant worked for his company as a construction worker from July 1981 through March 1986.

3. An undated sworn statement of [redacted] claiming to have resided with the applicant from May 1981 to April 1986 at [redacted]. The affiant stated that all rent receipts were in his name. It is noted that this affidavit was not notarized and was not submitted with proof of the affiant's identity.

4. An undated sworn statement of [redacted] claiming to have resided with the applicant from May 1986 to "the present," a date that cannot be identified, as the statement was not dated. The affiant stated that he and the applicant resided at [redacted] Alexandria, VA [redacted]. The affiant also stated that all rent receipts were in his name. It is noted that this affidavit was not notarized and was not submitted with proof of the affiant's identity.

5. An undated employment letter from [redacted], owner of [redacted], claiming that the applicant worked for him from May 1986 through October 1987.

6. An affidavit dated November 25, 2002 from [redacted] claiming that he has lived in the United States for 29 years and has known the applicant since December 1979. The affiant provided only the applicant's current residential address.

7. An affidavit dated January 4, 2003 from [redacted] claiming to have first entered the United States in June 1973. He stated that he has known the applicant since December 1973 and that since that time the applicant has resided at [redacted] NJ [redacted]

8. A notarized statement dated January 4, 2003 from [redacted] claiming that he has resided in the United States since 1978 and has known the applicant since December 1979. Mr. [redacted] provided the applicant's current residential address.

9. A notarized statement dated January 5, 2003 from [redacted] claiming that he has resided in the United States since August 1976 and has known the applicant since December 1979. Mr. [redacted] provided the applicant's current residential address.

10. A notarized statement dated January 5, 2003 from [redacted] claiming that he has resided in the United States since 1978 and has known the applicant since December 1979. Mr. [redacted] provided the applicant's current residential address.

11. A notarized statement dated January 5, 2003 from [redacted] claiming to have resided in the United States since March 1973 and has known the applicant since December 1979 at the applicant's current residential address.

12. A notarized statement dated January 5, 2003 from [redacted] claiming that he has resided in the United States since June 1973 and has known the applicant since December 1979. Mr. [redacted] provided the applicant's current residential address.

13. A notarized statement dated January 5, 2003 from [redacted] claiming that he has resided in the United States since August 1972 and has known the applicant since December 1979. Mr. [redacted] provided the applicant's current residential address.

14. A notarized statement dated October 31, 2002 from [redacted] in his capacity as imam and director of The Islamic Center of New Jersey, Jersey City. Mr. [redacted] stated that he has personally known the applicant since "early 1981" and claimed that the applicant has been a regular member of the religious congregation. Mr. [redacted] stated that the applicant moved to Virginia for a brief period, but provided no specific information with regard to the length of time of such residence and did not provide any of the applicant's residential addresses. It is noted that the applicant did not list any affiliations with any organizations, religious or otherwise, in his Form I-687.

15. An affidavit dated September 25, 2005 from [redacted] claiming to have known the applicant since November 1981. He further stated that he and the applicant attended the same mosque together until 1986 when the applicant moved to Virginia. Although the affiant stated that he kept in touch with the applicant after the move and claims to known of the applicant's move back to Brooklyn, New York in 1992, he did not provide any of the applicant's residential addresses during the relevant time period.

16. An affidavit dated September 23, 2005 from [redacted] claiming to have first met the applicant in Pakistan in December 1979. The affiant stated that he met the applicant again in the United States in the summer of 1981. The affiant also claimed that in 1983 the applicant informed him of his employment with Moon Construction. The affiant stated that he regularly met with the applicant until he moved to Virginia and claimed that the two continued to keep in touch during the applicant's residence in Virginia.

17. An affidavit dated September 27, 2005 from [redacted], also known as [redacted], claiming that he first met the applicant in October 1981 and that he visited him on various occasions at the applicant's [redacted] address. The affiant stated that he and the applicant attended a common mosque from November 1981 until the applicant's move to Virginia.

While Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence, the evidentiary weight of such affidavits must be determined the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *See Matter of E-M-*, 20 I&N Dec. 77. In the present matter, a number of the affidavits submitted are inconsistent both with one another and with claims made by the applicant. Of particular interest are those affiants that submitted more than one affidavit. Specifically, [redacted] the affiant in Nos. 7 and 15, stated in his first affidavit that he has known the applicant since December 1973 and that since that time the applicant has resided at [redacted]. In No. 30 of the most recently filed Form I-687, however, the applicant stated that he did not start residing at that address until January 2002. Moreover, in the affidavit discussed in No. 15 above, the same affiant stated that he has known the applicant since November 1981.

Similarly, the statements discussed in Nos. 14 and 17 above were also provided by one affiant whose testimony was inconsistent. Specifically, in the affidavit discussed in No. 14 above, Mr. [redacted] stated that he first met the applicant in "early 1981" when the applicant began attending religious services at a mosque where the affiant was an imam and director. However, in the affidavit discussed in No. 17 above the same affiant stated that he first met the applicant in October 1981, not "early 1981," and discussed attending religious services with the applicant, making no mention of his position as imam and director.

Additionally, all of the affiants whose affidavits were discussed in Nos. 6-13 above stated that they have been in the United States since the mid or early 1970s and all, with the exception of the affiant in No. 7, claim to have known the applicant since December 1979 with the affiant in No. 7 claiming to have known

the affiant since December 1973. While [redacted] subsequently submitted a second affidavit, discussed in No. 16 above, clarifying that he first met the applicant in Pakistan in 1979 and that he did not become reacquainted with the applicant in the United States until the summer of 1981, none of the remaining affiants provided further explanations. As such, it is unclear whether they claimed to have met the applicant in 1979 in the United States, which would be inconsistent with the applicant's own claim, or in Pakistan, which would be irrelevant to the applicant's claim. Meanwhile, none of these affidavits, with the exception of No. 7, which contained inconsistent information, provided any verifiable information about the applicant's residence during the statutorily relevant time period. Rather, they merely provided the applicant's last known address in the United States. With regard to Mr. [redacted] second affidavit clarifying his encounter with the applicant, the affiant also made note of the applicant's employment for Moon Construction since 1983. However, in No. 33 of the Form I-687 the applicant claimed that his employment with Moon Construction commenced in July 1981. In light of Mr. [redacted] claim that he became reacquainted with the applicant in the United States in the summer of 1981, it is unclear why he would have only learned of the applicant's employment with Moon Construction two years after the applicant's purported employment commenced.

Further, regarding past employment records, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, the employment letters discussed in Nos. 1, 2, and 5 fall far short of the criteria discussed above. Not only are all three letters undated, none of the employers provided the applicant's address at the time of the alleged employment and none indicate whether the information provided was obtained from official company records.

Lastly, while [redacted] and [redacted] both claim to have resided with the applicant during the statutorily relevant time period, both provided undated statements without any proof of their own identity or any evidence that either individual actually resided at the address claimed in his respective affidavit, even though both individuals claimed that rent receipts were in their names.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient attestations that are either inconsistent with the applicant's claim or are otherwise devoid of verifiable information. 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). In the present matter, the inconsistencies discussed above have neither been resolved nor even acknowledged.

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 reliance upon documents with minimal probative value, it is concluded that the applicant has 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-*,20 I&N Dec. 77. 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.