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

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[redacted]

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FILE: [redacted] Office: NEWARK Date: OCT 09 2007

MSC 05 067 10088

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: SELF-REPRESENTED

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 district director noted that the applicant failed to respond to the Notice of Intent to Deny dated April 24, 2006, within the requisite 30-day period. The district director, therefore, denied the application because the applicant failed to establish that he had resided continuously in an unlawful status since before January 1, 1982, through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4 1988.

On appeal, the applicant states that he has been legally blind since 1998 and explains that he relied on the assistance of another person to prepare and file his Form I-687 on his behalf. He submits medical documents relating to his vision and additional documents to corroborate his claim of continuous residence in the United States during the requisite period.

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).

An applicant applying for adjustment to temporary resident status must 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. Here, the submitted evidence is not relevant, probative, and credible.

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 6, 2004. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at an unidentified street address in Astoria, New York, from June 1979 to December 1980, at "[redacted] South Norwalk, Connecticut" from January 1980 to January 1987, and at "[redacted] South Norwalk, Connecticut" from February 1987 to June 1991. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that he was visiting his family in Pakistan from November 1984 to December 1985 and from February to March 1987. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he had been unemployed since 1979.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a photocopy of the biographic pages of his Pakistani passport No.

[redacted] along with a photocopy of a visa page from this passport bearing a one-entry nonimmigrant B-1 visitor's visa issued in Lahore, Pakistan, on April 24, 1979. The visa page bears a United States immigration stamp indicating that the applicant was admitted to the United States at New York, New York, on June 3, 1979.

The applicant also submitted a letter from [redacted] stated that he had known the applicant since 1975. [redacted] further stated that the applicant visited him in Chicago, Illinois, in 1980 and "stayed at my residence for a short period of time." [redacted] did not provide any relevant and verifiable information such as his address in Chicago when the applicant came to visit him in 1980 or the exact dates the applicant was visiting him in Chicago. Furthermore, [redacted] did not provide his address or telephone number for purposes of contacting him to verify the information he provided in his letter. Therefore, this letter will be accorded little evidentiary weight.

The applicant also provided a fill-in-the-blank affidavit dated June 9, 1990, from [redacted] stated that he had known the applicant since June 1982. The affidavit form contains preprinted text stating that the affiant is aware of the applicant's continuous residence in the United States since June 1982. However, [redacted] did not provide any relevant, specific, or verifiable information such as how he met the applicant, the frequency of his contact with the applicant, or the applicant's residences in the United States during the requisite period. Furthermore [redacted] did not provide his address or phone number for purposes of contacting him to verify the information he provided in his affidavit. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant subsequently submitted another affidavit dated November 8, 2004, from [redacted] stated in this affidavit that the applicant resided with him in his residence located at [redacted], South Norwalk, Connecticut" from 1984 to 1987. This statement contradicts the applicant's statement on the Form I-687 that he resided at [redacted] South Norwalk, Connecticut" from January 1980 to January 1987.

The applicant included a letter dated [redacted] (American Traders) located in Baltimore, Maryland, stating that the applicant worked for that company from 1985 to 1986 as a sales representative on a commission basis. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The employment letter from Ampak, Inc., does not conform to this standard. The signature of the author is illegible, and the author's name is not printed below the signature. Furthermore, the author of the letter does not provide the applicant's addresses in the United States during the employment period.

The applicant submitted an employment letter dated November 10, 1984, from [redacted], located at '[redacted], Elmhurst, New York." [redacted] Choudary stated that the applicant worked for him from 1982 to 1984 as a '[redacted] [sic] Representative." This letter does not conform to the standard for employment affidavits set forth at 8 C.F.R. § 245a.2(d)(3)(i). [redacted] did not provide the applicant's addresses in the United States during his period of employment for Madeena Appliances.

The applicant included a letter dated December 31, 1989, from [redacted] stated that the applicant stayed with him in his home located at "[redacted], Long Island City, New York" in June 1979 when he first arrived in the United States.

The applicant subsequently provided a second letter from [redacted] dated October 25, 2004. [redacted] stated in this affidavit that the applicant stayed with his family as a guest during the summer of 1979. However, [redacted] did not provide any information as to how he met the applicant.

The record contains a Form I-687 signed by the applicant on May 21, 1990. The applicant indicated on this Form I-687 that he was outside the United States visiting his family in Pakistan from June to September 1985 and from November to December 1987. The applicant did not list these absences on the current Form I-687. He indicated on the current Form I-687 that he was in Pakistan visiting family from November 1984 to December 1985 and from February to March 1987.

The applicant submitted an original Trans World Airlines (TWA) flight coupon reflecting a purchase date of November 1, 1987 and a New York/Karachi/Lahore itinerary. According to this itinerary, the applicant was scheduled to fly from New York to Karachi, Pakistan, on November 4, 1987, via TWA Flight No [redacted] and from Karachi, Pakistan, to Lahore, Pakistan, on November 6, 1987, via TWA Flight No [redacted] The applicant did not provide an original or photocopy of the return portion of his TWA ticket to establish the date he returned to the United States from Pakistan.

On September 4, 2001, the applicant filed a Form I-485 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. During his LIFE interview, the applicant signed a sworn statement in which he wrote in his own handwriting:

> [redacted] states [sic] under oath that after my first entry into United States on 6/3/79, I returned to my country on two occasions. Aug. 15, 1985 to Nov. 11, 1985 & October 30, 1987 to December 20, 1987.

This statement contradicts his statement on the 1990 Form I-687 that he was in Pakistan from June to September 1985 and from November to December 1987. It also contradicts his statement on the current Form I-687 that he was in Pakistan visiting family from November 1984 to December 1985 and from February to March 1987. The applicant has not provided any explanation for these contradictions in his claimed dates of absence outside the United States.

On April 24, 2006, the district director informed the applicant of her intent to deny the application unless he submitted additional evidence to corroborate his claim of continuous residence in the

United States during the requisite period. The district director specifically noted that the applicant indicated on the Form I-687 that he was in Pakistan visiting family from November 1984 to December 1985, a period of approximately one year and one month. This represents an absence that exceeds the 45 days allowed for a single absence outside the United States and the 180 days allowed for allowed for all absences outside the United States in the aggregate. The applicant was granted 30 days to submit additional evidence to corroborate his claim of continuous residence in the United States throughout the requisite period.[1]

On appeal the applicant states that he is legally blind and relied on another individual to fill out his Form I-687 for him. The applicant provides correspondence relating to the medical condition of his vision. He explains that he "informed the person who prepared my application all about my history (i.e. my 1st time entry into USA, all my employments/residences and all trips out of United States" but "I could not read when he wrote in my application."

It is noted that part #44 of the current Form I-687, where the name, address, and telephone number of the person who prepared the application on behalf of the applicant must be provided, is blank. If someone other than the applicant prepared the Form I-687 for him, he or she should have completed part #44 of the application. The applicant himself signed the Form I-687 on November 14, 2004, certifying under penalty of perjury that all information provided on the application was true and correct to the best of his knowledge.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In this case, the applicant, on appeal, does not make a statement or submit any evidence regarding his statement on the current Form I-687 that he was outside the United States from November 1984 to December 1985. Nor did he submit any independent evidence to establish the

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[1] It is noted that the notice of intent to deny was not mailed to the applicant's most current address. The notice of intent was mailed to the applicant at [redacted]" However, the applicant reported a new address to CIS on July 20, 2005, "[redacted]" All evidence submitted by the applicant with the Form I-687 and on appeal will be fully addressed in this decision.

original reason for this trip to Pakistan or the reason his absence lasted more than one year. Therefore, it is concluded that the applicant was absent for over a year as he stated on the current Form I-687. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came unexpectedly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States throughout the requisite period.

The applicant submits a letter dated April 2, 1988, from [redacted] Paul's Episcopal Church, located at Clinton and Carroll Streets, Brooklyn, New York. [redacted] stated that the applicant had worked for his church doing plastering and construction work "off and on again since September of 1981." The employment letter from [redacted] does not conform to the standard set forth at 8 C.F.R. § 245a.2(d)(3)(i). [redacted] did not provide the applicant's addresses in the United States during the employment period.

The applicant also submitted a letter dated March 23, 1989, from [redacted] President of [redacted] located at [redacted], Bronx, New York. [redacted] stated that the applicant was employed by his company as a restoration supervisor from January 1986 to September 1987. This letter does not meet the employment affidavit standard set forth at 8 C.F.R. § 245a.2(d)(3)(i). [redacted] did not provide the applicant's addresses in the United States during his period of employment for this company.

Furthermore, this letter appears to have been altered. The original date of the letter appears to have been eradicated and the date "March 23, 1989" substituted. Additionally, the beginning and ending years of employment appear to have been eradicated and the years "1986" and "1987" substituted. It is noted that the name [redacted]" and the title, "President," are typed in a completely different font than the rest of the letter. These discrepancies raise serious questions of credibility regarding the applicant's claim of employment for this company.

The applicant included a letter dated June 20, 1989, from [redacted] Restoration, located at "[redacted], Glendale, New York." [redacted] stated that the applicant worked for his company as a restoration supervisor from March 1982 to July 1984. This employment letter does not conform to the standard for employment affidavits set forth at 8 C.F.R. § 245a.2(d)(3)(i). [redacted] did not provide the applicant's addresses during the employment period. Additionally, [redacted] did not sign the letter; therefore, it is not possible to know if the [redacted] actually wrote the letter. Furthermore, [redacted] statement that the applicant worked for his company from 1982 to 1984 contradicts [redacted] statement in his letter of November 10, 1984, that the applicant worked as a sales representative at his store from 1982 to 1984.

It is noted that the applicant has submitted employment letters from five different purported employers. The statements regarding the applicant's employment in these letters contradict the applicant's statement on the Form I-687 that he has been unemployed since he first entered this country in 1979.

The applicant has not provided any explanation for the contradictions and discrepancies noted above. These contradictions and discrepancies raise serious questions of credibility regarding the applicant's claim of continuous residence in the United States during the requisite period.

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, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, the applicant, on appeal, has not submitted any evidence to overcome the intended basis for denial of the application stated in the notice of intent to deny. The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. The affidavits submitted by the applicant to corroborate his claim either lack sufficient specific and verifiable information to corroborate his claim or contain contradictory statements. Additionally, two of the employment letters appear to have been altered and therefore cannot be afforded any evidentiary weight.

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 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--, 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.