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[REDACTED]

FILE: [REDACTED]
MSC-05-326-12502

Office: NATIONAL BENEFITS CENTER

Date: APR 30 2008

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 District Director, National Benefits Center. 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 that though the applicant submitted evidence in support of his application, only one affidavit was relevant to the requisite period. The director found that this affidavit was neither credible nor was it amenable to verification. Therefore, he stated that this affidavit did not allow the applicant to prove by a preponderance of the evidence that he entered the United States on a date prior to January 1, 1982 and then continuously resided in an unlawful manner for the duration of the requisite period. Because the applicant failed to provide sufficient evidence, 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 additional evidence for consideration 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 August 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 Brooklyn, New York where he states he resided from May 1981 until March 1998. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. Here, he showed his first and only absence from the United States to have been from March until May of 1998. 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 self-employed as a painter from June 1981 until April 1998.

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 photocopied pages of his passports and no other supporting documentation at the time he submitted his Form I-687. Details of one of his passports are as follows:

Photocopied pages of Passport # [REDACTED] a Pakistani passport issued by the Embassy of Pakistan in Kuwait as follows:

The title page of this passport indicates that it was issued to the applicant in Kuwait on April 11, 1996 by the Embassy of Pakistan. It is noted here that the applicant indicated that he had no absences from the United States from May 1981 until the year 1998 on his Form I-687. Because this page of his passport indicates he was present in Kuwait in 1996, doubt is cast on whether the applicant has fully and truthfully represented all of his absences from the United States on his Form I-687.

- Page 1 of this passport indicates that its bearer is the applicant, [REDACTED]
- Page 2 of this passport indicates that its bearer resides in Village Chakora in Gujrat. There is no other address indicated as a present address. That this passport indicates that the applicant resided at a specific address in Pakistan when this passport was issued to him in Kuwait casts doubt on the applicant's assertion on his Form I-687 that he resided in Brooklyn in 1996.
- Page 3 of this passport shows a photograph that appears to be the applicant and bears a stamp of the Embassy of Pakistan in Kuwait. It is indicated that the passport expires in April 2001.
- Page 13 of this passport bears a visa issued to the applicant by the United States Embassy in Kuwait on August 12, 1996. The existence of this visa is a further indication that the applicant was in Kuwait in 1996. Therefore doubt is cast on the applicant's assertion that he never left the United States from May 1981 until 1998.

- Page 14 of this passport indicates that the applicant left Karachi, Pakistan on May 12, 1998 and then entered the United States in New York on the same day.

As was noted, that this passport was issued to the applicant in Kuwait and indicated that he resided in Gujrat, Pakistan in 1996 when the applicant indicated on his Form I-687 that he had no absences from the United States during the years 1981 to 1998 casts doubt on whether the applicant truthfully represented his addresses of residence and absences from the United States during and after the requisite period on his Form I-687.

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).

On November 15, 2005, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant in which he stated that the applicant had failed to meet his burden because he failed to provide evidence: that he entered the United States before January 1, 1982 and then resided continuously except for brief absences since that date and until he or his spouse or parent was turned away by the Service when he tried to apply for legalization during the original filing period; that he was continuously physically present in the United States from November 6, 1986 until the date the applicant or his parent or spouse attempted to apply for legalization during the original filing period; or that he was admissible as an immigrant. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

It is noted that the director did not note that the applicant submitted the passport or that there appeared to be inconsistencies between testimony provided in the applicant's Form I-687 and those pages of his passport that he submitted.

In response to the director's NOID, the applicant submitted one (1) letter as follows:

- A letter from [REDACTED] dated November 21, 2005. In this letter, the declarant states that she has known the applicant for fourteen (14) years. It is noted that this indicates that [REDACTED] met the applicant in 1991, after the conclusion of the requisite period. Though [REDACTED] attests to the applicant's character in her letter, the issue in this proceeding is whether the applicant continuously resided in the United States during the requisite period. As [REDACTED] did not meet the applicant until after that time, this letter does not contain testimony that is relevant to this proceeding.

On September 12, 2006 the director denied the application. In doing so, he noted that the applicant timely submitted additional evidence, the letter from [REDACTED] in support of his application. However, the director stated that this letter is not credible nor is it amenable to

verification as it was not submitted with identity documents, proof that [REDACTED] was in the United States during the statutory period or proof that [REDACTED] had direct personal knowledge of the events and circumstances of the applicant's residency during the requisite period. Again, it is noted here that the AAO finds that regardless of its credibility or amenability to verification, this letter from [REDACTED] does not contain testimony relevant to this proceeding.

In his decision, the director noted the photocopies of the applicant's passports and identity documents. The director stated that these documents did not offer proof that the applicant entered the United States prior to January 1, 1982 and then resided continuously in an unlawful state until the end of the requisite period. Again, the AAO notes that these documents call into question the credibility of the applicant's statements regarding his addresses of residence and his absences from the United States on his Form I-687, as they show he was residing outside the United States in 1996. While this is outside the requisite period, this inconsistency calls into question the reliability of assertions regarding the applicant's addresses of residence and absences from the United States in general.

On appeal, the applicant submits two (2) additional affidavits in support of his application. Details of these affidavits are as follows:

- An affidavit from [REDACTED] that is notarized and is dated October 11, 2006. In this affidavit, [REDACTED] states that he has resided in the United States since 1980. He states that the applicant is his friend and that the applicant lived at [REDACTED] in Astoria New York during the requisite period. However, it is noted that the applicant indicated that during the requisite period he lived on [REDACTED] in Brooklyn and on [REDACTED] beginning in May of 1998. Though the affiant states that he knows that the applicant resided in the United States during the requisite period, this affiant does not offer proof that he himself resided in the United States at that time. He does not indicate how he knows when the applicant began residing in the United States. He does not state the frequency with which he saw the applicant during the requisite period. He does not indicate whether there were periods of time during the requisite period when he did not see the applicant. This, combined with the fact that the affiant stated that the applicant resided at an address from 1982 until 1987 that the applicant indicated he did not reside at until 1998 calls into question the credibility of this affidavit. Therefore, this affidavit carries very minimal weight in establishing that the applicant resided continuously in the United States during the requisite period.
- An affidavit from N [REDACTED] that was notarized on October 10, 2006. He submits a copy of his passport as proof of his identity. In this affidavit, the applicant, who was born in Greece, states that he has known the applicant since 1974. It is noted here that the applicant indicated he did not enter the United States until May 1981 on his Form I-687. Here, the affiant did not indicate where he met the applicant. The affiant goes on to say that the applicant has resided in the United States since 1981 and that he resided in Brooklyn from that date until 1987. Here, the affiant does not submit proof that he himself resided in the United States during the requisite period. He fails to indicate the

frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. Because it is significantly lacking in detail, this affidavit carries very little weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, the applicant has not provided sufficient evidence of his continuous residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period. The affidavit from [REDACTED] is not relevant to the requisite period. The affidavit from [REDACTED] states that the applicant resided at an address during the requisite period that is not consistent with what the applicant showed on his Form I-687. The affidavit from [REDACTED] is significantly lacking in detail. In addition, copies of his passport in the record indicate that the applicant had absences from the United States that are not consistent with statements made on his Form I-687.

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