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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK Date: MAR 3 1 2008

MSC 05 236 14616

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.

for Michael T. Kelly
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, New York. 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, on May 24, 2005. The applicant attached two affidavits. In a May 17 affidavit of an unknown year, [redacted] stated that he resided in New Jersey and had known the applicant since December 1981 when he met her at a New Year's Eve party, that he always celebrated the EID festival with her and family, and that he had visited places in the United States with her in 1986, 1987, and 1988. In a May 16, 2005 affidavit, [redacted] stated that he had known the applicant in Pakistan and that the applicant contacted him in December 1981 when she came to the United States and that she resided with his family for a few days and that they see each other's family every other week.

In a March 6, 2006 interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that she entered the United States in December 1981 on a visitor's visa at John F. Kennedy Airport, but that she had lost the passport on which she had entered as well as her I-94.

On March 11, 2006, the director issued a Notice of Intent to Deny (NOID) the application. The director noted the two affidavits submitted but found that the affidavits did not contain identity documents of the affiants and did not include proof that the affiants were in the United States during the statutory period. The director also noted that although the applicant claimed to have lived in the United States for almost 25 years, the interview had been conducted in Urdu, not English.

In response to the director's NOID, the applicant indicated she could speak English but to make sure she understood the questions at the interview she wanted to use an interpreter. The applicant submitted photocopies of pages one through four and pages ten through fifteen of a passport for [redacted]. The passport shows an entry stamp to Canada as a visitor in 1980, an entry stamp into the United States in E-1 nonimmigrant status expiring in January 1982, and a United States visa issued at Washington for multiple entries into the United States for the time period between January 1982 and January 1986. The record also includes the first page of a United States passport issued to [redacted] in November 2003. The applicant also submitted photocopies of pages one through nine of a passport for [redacted] showing entries into the United States in March 1982, December 1983, and July 1984. The record also includes a photocopy of [redacted]'s United States naturalization certificate issued in June 1991.

The applicant further submitted a third affidavit, dated November 8, 2005 fro
indicated that she resided in New York but sometimes lived in Florida and had known the applicant since December 1981 when the applicant and her husband were living at [redacted] in Astoria, New York and came to her to rent the affiant's apartment close to the applicant's home. [redacted] indicates that she also used the applicant and her husband's services to alter clothes and she used to eat dinner with them. Ms.

[redacted] noted that the applicant lived at the [redacted] address until September 1985 when the applicant's husband moved to Florida and that the applicant and her husband are now residing at and renting the affiant's apartment. The applicant provided a photocopy of the affiant's Florida driver's license.

On August 16, 2006, the director denied the applicantion. The director determined that the applicant failed to furnish evidence of her entry into the United States in December 1981, instead claiming that she had lost her passport; had required an Urdu interpreter when conducting the interview which is not credible if she had lived in the United States for 25 years; and that the affidavits submitted were not documents constituting a preponderance of evidence as to the applicant's residence in the United States.

On September 1, 2006, the applicant submits an affidavit on appeal restating that she had lost the passport and I-94 that she had used to enter the United States on a visa in December 1981, that she used an interpreter in the interview to make sure she understood the questions, and that she had resided in an unlawful status from January 1, 1982 through May 4, 1988 and maintained continuous physical presence from November 6, 1986 through May 4, 1988.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien who entered the U.S. as a nonimmigrant before Jan. 1, 1982, must establish that he or she was unlawfully present by Jan. 1, 1982 in order to be considered for temporary resident status under section 245 of the Act. This can be demonstrated by showing that the period of authorized stay as an NIV expired before Jan. 1, 1982, or that he or she was otherwise out-of-status and that the unlawful status was known to the U.S. government as of Jan. 1, 1982. An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application.

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 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. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date until the date of filing the application as defined above. The applicant has submitted three affidavits from three different individuals in support of her claim.

The applicant testified that she entered into the United States in December 1981 on a visa. The applicant does not explain when or how her legal status in the United States changed to become unlawful. The AAO notes that the applicant chose to conduct her interview with CIS personnel in Urdu to make sure she understood the questions and answers. The applicant's desire to fully understand the questions in her

native language does not impinge upon her credibility. The director's inference to the contrary is hereby withdrawn. However, the lack of information regarding the applicant's initial unlawful status in the United States, if any, undercuts her claim that she continuously resided in the United States in an unlawful status since January 1, 1982. In addition, the affidavits submitted do not provide sufficient detail of the circumstances and events of the affiants' knowledge of the applicant's continuous unlawful presence in the United States for the requisite time periods. The affiants indicate they have met periodically with the applicant during the requisite time period; however, the affiants do not provide any evidence of the periodic celebrations, the trips took, or other information establishing that the applicant was actually in the United States during the requisite time period. Moreover, the information provided by the affiants show that the affiants were intermittently in the United States and while in the United States were in various locations. The affidavits provide only general information that lacks concrete details that demonstrate sufficient contacts of the affiant with the applicant to establish the applicant's presence for the requisite periods. The affidavits do not constitute sufficient evidence to conclude that the applicant continuously resided in the United States in an unlawful status for the requisite time period. These three affidavits and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her 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 generic and incomplete affidavits, it is concluded that she has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.