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

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[redacted]

FILE: [redacted] Office: DETROIT Date: MAY 05 2008

MSC 05 256 13178

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, Los Angeles. 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 found that numerous unresolved inconsistencies with regard to the applicant's testimony were contained in the record, and further noted that documentation upon which the applicant based his claims were proven fraudulent. 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, counsel for the applicant addresses two issues raised by the director in the appeal, and submits additional documentary evidence in support of the claim. First, counsel claims that the director incorrectly stressed the inconsistent testimony of [redacted], and claims that instead of contacting [redacted] to clarify her testimony, the director denied the petition concluding that the statements were false and thus not persuasive. Second, counsel contends that with regard to the applicant's inconsistent statements, the fact that he is uneducated contributes to his lack of memory regarding dates, specifically the birth dates of his children. Counsel concludes that the failure to remember such dates should not be construed as a lie.

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)(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).

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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 13, 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 first address in the United States to be in Pontiac, Michigan, from 1995 to January 2002. At part #33, he showed his only employment in the United States to be that of a taxi driver, and he provided no further information regarding the nature of his employment or the duration of this employment.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

1. Affidavit dated July 28, 1994 by [redacted], claiming that the applicant left the United States on May 11, 1987 to visit Pakistan, and returned on May 25, 1987.

2. Landlord affidavit dated December 20, 1994 by claiming that she has known the applicant to reside at the property located at in Pontiac, Michigan from February 1987 to January 1991

3. Affidavit dated December 23, 1994 by [redacted], claiming that she has known the applicant since 1983.

4. Second landlord affidavit dated December 20, 1994 by [redacted], claiming that she has known the applicant to reside at [redacted] in Auburn Hill from August 1981 to December 1986.

5. Undated affidavit by [redacted] claiming that the applicant was employed as "labor" at Lake Land Maintenance Co. from October 1987 to March 1994.

6. Undated letter from of India Foods & Boutique, claiming that the applicant worked for the company as a cashier from November 1981 to December 1986. Subsequent attempts to verify the authenticity of this document showed it to be fraudulent.

7. Second affidavit dated December 20, 1994 by [redacted], claiming that she has known the applicant since 1982.

8. Letter dated January 24, 2002 from [redacted], D.D.S., claiming that he has known the applicant since 1981. Specifically, he claims that the applicant cleaned up his front and back yards in April and September of 1981.

9. Undated letter dated from [redacted], claiming that he has known the applicant since 1981 when he met him at a Pakistani community picnic in Mt. Clemens, Michigan on July 4, 1981.

10. Undated letter from [redacted] claiming that he has known the applicant since 1981 when he met his at a Pakistani community gathering in August 1981 at Wayne State University.

11. Undated letter from [redacted], claiming that the applicant worked for his company, Lakeland Corporation, as a snow remover in the Winter of 1981.

In denying the application the director noted that when coupled with the applicant's statements under oath in his September 25, 2005 and November 2, 2004 interviews, the documentary evidence submitted was contradictory and inconsistent with the applicant's testimony. First, the director focused on the applicant's statements under oath, where he attested to entering the United States via Seattle, Washington for the first time in the summer of 1981 through British Columbia, Canada. The director noted that this statement directly contradicted his sworn statement in his affidavit for class membership, where he

claimed to have first entered the United States via Plattsburg, New York in August of 1981. Clearly, these inconsistent statements cast doubt upon the validity of the applicant's claims that he was present in the United States prior to January 1, 1982. Moreover, they prompted the AAO to critically review the documentary evidence for further inconsistencies, which have been discovered.

For example, the letter from [redacted] claims that the applicant cleaned his yard in Michigan in April and September of 1981. Since both of the applicant's claims of entry indicate he did not enter the United States until summer of 1981, it stands to reason that the statement of [redacted] is false. This further gives rise to the credibility of the claim of [redacted] who claims he met the applicant on July 4, 1981, and the claim of [redacted] who claims the applicant worked for him removing snow in the Winter of 1981. Arguably, it cannot be determined whether Winter of 1981 is the first part or last part of 1981, and the applicant's claim that he entered the United States in the summer of 1981 could in fact include July. However, given the many inconsistencies, the credibility of these documents in now in question. 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 addition, the applicant claimed during his interview that he did not know who [redacted] was, yet she was apparently his landlord at two different properties from 1981 to 1991. In addition, the applicant thought that the affiant who corroborated his claim of departure from the United States in 1987, [redacted], was a man when her name was mentioned. Finally, attempts to verify the employment letter allegedly submitted by [redacted] were unsuccessful, in that [redacted] denied writing the letter submitted and denied knowing the applicant. This is critical to the applicant's clam, because it thereby calls into question the validity of the other documentary evidence submitted in support of his application.

Finally, the director focused on the fact that the applicant was unable to provide consistent birthdates for his children. On Form I-485 filed on August 1, 2001, the applicant listed their birthdates as "unknown." However, on his Form I-687 filed in 1994, all birth years of his children were provided. Furthermore, it is noted that his youngest child was born on August 11, 1987. If the applicant's claim that he only visited Pakistan once in the relevant period, namely, in May 1987, it is unclear how his youngest child was conceived in Pakistan. 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. *Matter of Ho*, 19 I&N Dec. at 591.

On appeal, the applicant attempts to explain the letter of by submitting an affidavit apparently executed by herself, claiming that she did not remember the applicant until she saw his face after being contacted by CIS. The AAO does not find this affidavit persuasive. The key issue in this matter is that denied writing the undated letter submitted by the applicant. While [redacted] may in fact remember the applicant from the past, the fact that a fraudulent document was submitted on her behalf leads the AAO to question the validity of all other letters and affidavits submitted by the applicant. As previously stated, If CIS fails to believe that a fact stated in the petition is true, CIS may

reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Finally, counsel contends that the applicant is uneducated and thus is unable to remember dates and places, particularly the birthdates of his children. This statement is insufficient to overcome the director's denial. The application contains a large number of inconsistencies that counsel and the applicant fail to address, such as which claim of first entry (if such entry was even affected) is correct. In the event that the applicant did come to the United States in the summer of 1981, it seems reasonable to presume that he would recall if he entered on the East Coast or the West Coast. Such an occurrence is not a trivial or mundane fact that escaped one's mind. Therefore, this glaring contradiction, coupled with the numerous other contradictions in the record, render it impossible to find the applicant has me his burden of proof in these proceedings. Again, 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 summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted evidence that is either fraudulent or directly contradicts the applicant's own sworn statements. 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 for the requisite period 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.