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

PUBLIC COPY

U.S. Citizenship and Immigration Services

L1

FILE: [redacted] Office: NEW YORK Date: OCT 01 2008

MSC 06 032 15687

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, 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. 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 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 asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted. Specifically, the applicant stated that an error was made on a Form I-700 concerning his last entry into the United States (May 2, 1985), and that the error was made by his attorney. The applicant stated that his last entry was actually on March 2, 1980. The applicant further stated that the I-700 also indicated that he had traveled to Mexico for a one-month period of time, but that was also an inaccurate statement.[1] The applicant stated that he had submitted evidence of his residence in the United States from March of 1980 until the present.

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 245(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

---

[1] The record of proceeding contains a Form I-700 executed by the applicant. The Form I-700, although signed by the applicant, bears no signature date. A United States immigration officer (legalization examiner) signed the document on February 17, 1989. There is no mention on the Form I-700 that the applicant departed the United States for a period of one month to travel to Mexico as referenced by the applicant on his Notice of Appeal (Form I-694).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

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 applicant submitted the following documentary evidence:

AFFIDAVITS

- [redacted] submitted two sworn affidavits. In an affidavit dated October 4, 2005, the affiant states that she is acquainted with the applicant, has known him for 25 years, and that she has personal knowledge that the applicant has resided in the United States since 1980. The affidavit further states that the applicant left the United States "two time[s]" to visit the

country of Pakistan, but provides no additional information about the applicant's referenced departure.

In a sworn affidavit dated October 6, 2006, [redacted] states that: she is a citizen of the United States by birth; she and the applicant have been friends since early 1980; she subsequently became friends with the applicant's roommate [redacted] she visited the applicant's residence frequently; and that she subsequently married the applicant's roommate. The affiant further states that the applicant lived with [redacted] until 1988, when the affiant and [redacted] were married, and that due to her close association with the applicant she knows the details of his residence and can state that the applicant "was living in the United States from at least May of 1980."

- [redacted] submitted two sworn affidavits. In an affidavit dated October 19, 2005, the affiant states that he is acquainted with the applicant, has known him for 40 years, and that he has personal knowledge that the applicant has resided in the United States since March of 1980. The affidavit further states that the applicant left the United States "two time[s]" to visit the country of Pakistan, but provides no additional information about the applicant's referenced departure.

  In a sworn affidavit dated October 24, 2006, [redacted] states that: he immigrated to the United States in 1981, and is a naturalized United States citizen; the applicant is his brother; the applicant traveled to the United States in early 1980; the applicant contacted him by telephone in March of 1980 stating that he had arrived safely in the United States; he (the affiant) arrived in the United States in July of 1981, and stayed with the applicant in New York for a few weeks; the applicant used to sell newspapers in Brooklyn and worked independently until he moved to Texas in April of 1985 to work on a farming operation; the applicant was dissatisfied with farm work and returned to New York after a few months; the applicant then began working at a gas station and desired to open his own business; he remained in close contact with the applicant and visited him frequently; he accompanied the applicant to apply for legalization in 1987 but the applicant's application was not accepted; and in 1988 the applicant again applied for legalization, and this time his application was accepted, but the applicant never received any response from government officials on the application. The affiant provided no additional relevant information.

- [redacted] provided two sworn affidavits. In an affidavit dated October 7, 2006, Mr. [redacted] states that: he is the applicant's brother and a naturalized citizen of the United States; he lived with the applicant in New York from October of 1985 until August of 1997; and due to his close relationship with the applicant he knows the details of the applicant's residence and can state that the applicant has resided in the United States since March of 1980.

  In a sworn affidavit dated November 4, 2006, [redacted] states that: he is a citizen of the United States; the applicant is his younger brother; the applicant immigrated to the United States in 1980; he (the affiant) immigrated to the United States in 1981 and reunited with the applicant; he lived with the applicant for a few weeks upon arrival in the United States; the

applicant traveled to the United States without a visa and has remained in an illegal status; the applicant sold newspapers in Brooklyn to earn a living, but then traveled to Texas in 1985 to work on a farming operation; the applicant returned to Brooklyn and moved into the affiant's apartment; the applicant found employment in a gas station; another brother accompanied the applicant to apply for legalization but the legalization application was denied; and in 1988 the applicant again applied for legalization, and this time the application was accepted, but the applicant received no official response from immigration officials.

- [redacted] provided a sworn affidavit wherein he states that: he is a naturalized citizen of the United States; he lived with the applicant in Brooklyn, NY from March of 1980 until May of 1985; and that due to his close relationship with the applicant, he knows the details of the applicant's residence in the United States and can state that the applicant has lived in the United States since March of 1980.

- [redacted]f provided a sworn affidavit on the letterhead of "ALL ASIAN GROC[E]RY & HALAL MEAT" wherein he states that: he is the president of the aforementioned business; the applicant has been a regular customer of his business since 1980; the applicant is a person of good moral character; and the applicant used to attend community gatherings and pray at the Makki Mosque located in Brooklyn, NY.

Although the applicant has submitted several sworn witness statements/affidavits in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced affidavits have been submitted by family members and acquaintances. The affidavits submitted by non-family members state generally how the affiants know the applicant, and that the applicant has resided in the United States for the requisite period. The witness statements provide no additional relevant information. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavits from the applicant's brothers [redacted] also fail to provide sufficient detail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. The affidavits provide general statements which state little more than: the applicant traveled to the United States in 1980; the applicant worked in New York for the requisite period, except for a brief period of employment in Texas as a farm laborer; the applicant lived with one or both brothers for brief periods of time; and the applicant has resided in the United States for the duration of the requisite period. The affiants do not provide concrete, detailed information about the applicant's arrival in the United States. Nor do they provide concrete detailed information about the applicant's whereabouts and activities during the requisite period. The affidavits do not, therefore, provide probative and credible information establishing the applicant's continuous unlawful residence in the United States for the duration of the requisite period, for the same reasons set forth above in the discussion about the affidavits from the applicant's acquaintances.

EMPLOYMENT

Poteet provided the following sworn affidavits, all of which are dated August 4, 1988, relative to the applicant's employment during the requisite period:

- The affiant states that according to "farm records maintained by me [and] located at Route [redacted] the applicant worked for the affiant as a seasonal agricultural worker. The applicant's period of employment was from 5/9/85 – 10/29/85, or a total of 120 days. The applicant worked from two to eight hours performing seasonal agricultural services related to: tomatoes, green peas, okra and rice. The affiant then states that during the period, the applicant worked "with me from 6/17/85 to 11/29/85."

  The AAO notes that the work period of the applicant (5/9/85 – 10/29/85) indicates a period of 173 days employment. The period of time noted by the affiant in narrative form immediately after the dates of employment listed state that the total days of employment are 120 days. At the end of the affidavit, the affiant states that the applicant worked with him from 6/17/85 to 11/29/85. There is not explanation for the inconsistencies contained in this affidavit.

- The affiant states in this affidavit that the applicant resided and maintained a residence at [redacted]exas from "5/9/85 to 10/29/85."

- The affiant states in this affidavit that he is the owner of Poteet Farm, and that he is able to verify that he is familiar with the applicant and the applicant's employment history with Poteet Farm. The affiant states that the applicant has never been laid off and has been employed during the entire period (no period of employment is listed in this document). The affiant further states that employment records are not available for his company because the applicant was paid in cash.

> The statement by the affiant, that company records are not available, is inconsistent with statements made by the affiant in his previous affidavit (referenced above) wherein the affiant verifies details of the applicant's employment, and states that the information was taken from company records located at [redacted]

As noted above, the affidavits presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the applicant 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. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

Attestation

The applicant submitted a sworn attestation from [redacted] General Secretary of the Muslim Community Center of Brooklyn, Inc, on the center's letterhead. [redacted] states that the applicant is a resident of Flushing, NY, and that he regularly attended Friday prayer from May of 1984 until the present date (the date of the attestation is October 8, 2006). The attestation author further states that the applicant used to attend community gatherings and offer prayer at Makki Mosque in Brooklyn, NY.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

> (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
>
> (A) Identifies applicant by name;
>
> (B) Is signed by an official (whose title is shown);
>
> (C) Shows inclusive dates of membership;
>
> (D) States the address where applicant resided during membership period;
>
> (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
>
> (F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

The attestation is not deemed probative or credible because it conflicts with other information provided by the applicant. The applicant stated, under penalty of perjury, on the Form I-687 that he was employed by [redacted] in Hooks, TX from 5/1/85 – 10/1/85. Other affidavits submitted on behalf of the applicant attempt to verify this period of employment. It is, therefore, not possible for the applicant to have attended Friday prayer at the Muslim Community Center of Brooklyn, Inc., or the Makki Mosque, from May of 1984 until October 8, 2006 as stated by the attestation author. The noted contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. The attestation provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. Again, it is incumbent upon the applicant 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. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

ADDITIONAL INCONSISTENCIES OF RECORD

The record contains a Form I-700, executed by the applicant under penalty of perjury, wherein he states that he last entered the United States on May 2, 1985 at the Texas border. The applicant stated to a United States immigration officer at his legalization interview on October 10, 2006, that he first entered the United States in March of 1980 and was smuggled across the Canadian border, and that he did not leave the United States during the requisite period. On the From I-700 the applicant listed no residences in the United States prior to 1985, even though the Form I-700 asked the applicant to list all periods of residence in the United States since May 1, 1983. On the Form I-687, the applicant stated, under penalty of perjury, that he lived in Brooklyn, NY from March of 1980 until May of 1985.

The record contains a Form I-765 wherein the applicant states, under penalty of perjury, that he last entered the United States on May 2, 1985 at the Canadian Border. This information is contradictory to the statements made by the applicant to United States immigration officials at his legalization interview, on the Form I-687, and to statements made by the applicant's witnesses in sworn affidavits.

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. Once again, it is incumbent upon the applicant 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. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, the applicant 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.