

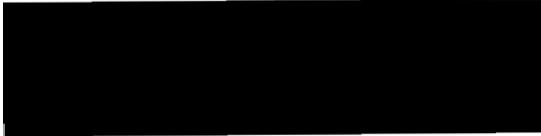
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: 
MSC-05-306-10966

Office: HARTFORD

Date: **OCT 09 2008**

IN RE: Applicant: 

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 Director, Hartford. 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 denied the application on January 19, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. The director also found that the applicant had been absent from the United States for an aggregate period of more than 180 days.

On appeal the applicant, through counsel, states that he has satisfied his burden of proof and established his eligibility for status as a temporary resident. Counsel also notes that the director erred in his finding regarding the applicant's absences from the United States, in that the bulk of those absences occurred after 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 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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

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 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, 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.

As noted above, the director concluded that the applicant was not eligible for temporary resident status under the CSS/Newman Settlement Agreements because the applicant testified that he had been absent from the United States for more than 180 days in the aggregate. However, as noted by counsel, the bulk of these applicant's absences occurred after the requisite period. The absences which occurred after the requisite period are not relevant to a determination of eligibility for temporary resident status. Therefore, that portion of the director's decision relating to the applicant's absences from the United States will be withdrawn.

Thus, the only 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 has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 2, 2005. At part #32 of the application, where applicants were asked to list all absences from the United States since January 1, 1982, the first absence listed by the applicant was June 1987 to July 1987. This conflicts with other information in the record. Specifically, the record contains a Form G-325A Biographic Information signed by the applicant on January 13, 1998. On that form, the applicant stated that he was married in Pakistan on June 15, 1984. The applicant's failure to list this absence on his Form I-687 application is a material discrepancy which detracts from the credibility of the applicant's claims.

The applicant submitted the following affidavits and written statements in support of his application:

- Two affidavits from [REDACTED] one dated May 4, 2005 and the other dated February 6, 2007. The latter affidavit contains significantly more detail regarding how the affiant came to meet the applicant and the nature and frequency of their contact throughout the requisite period. However, there is information in this latter affidavit which conflicts with other information in the record. Specifically, the affiant states that the applicant went to Pakistan in 1988 to get married. This conflicts with the information provided by the applicant in the Form G-325A Biographic Information. This inconsistency detracts from the credibility of this affidavit.
- Two affidavits from [REDACTED] one dated May 3, 2005 and one dated February 9, 2007. The latter affidavit contains significantly more detail regarding how the affiant came to meet the applicant and the nature and frequency of their contact throughout the requisite period. The affiant acknowledges that he did not meet the applicant until January 1982, but states that he has “strong reasons to believe” that the applicant was residing in the United States prior to January 1982. This affidavit constitutes some evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 5, 2005. The affiant states that he has known the applicant since 1981 and that the applicant “was a friend of a common friend.” The affiant does not explain how he came to meet the applicant or how he dates his initial acquaintance with the applicant. The affiant also fails to provide any details regarding the nature or frequency of his contact with the applicant during the requisite period. Lacking such probative details, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 3, 2005. The affiant states that he has known the applicant since 1981. The affiant also claims to have personal knowledge that the applicant was residing in the United States from 1981 through 1988 and states that “during the said period [the applicant] was residing at [REDACTED], Flushing, New York 11354.” This conflicts with information provided by the applicant in that he listed [REDACTED] as his address only from 1981 until 1985. Further, the affiant fails to provide probative details such as how he came to meet the applicant or the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. 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 inconsistent information in the record and the applicant’s 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. 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.