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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 01 2009

MSC-06-025-10321

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.

John F. Grissom
Acting 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, or *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 of the Los Angeles office, and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding 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 time period. More particularly, the director's stated basis for denying the claim was that the witness statements were found to contain inconsistencies when an attempt was made at verifying their content. Therefore, the witness statements were determined to be of minimal probative value.

On appeal, counsel for the applicant asserts that the applicant has established, by a preponderance of the evidence, his unlawful residence for the requisite time period, and that the denial was arbitrary and contrary to precedent. Counsel asserts that the director denied the application solely on the basis that the applicant's evidence was mainly in the form of witness statements. The applicant has not submitted any new evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

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).

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.

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[1] The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C.§ 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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 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. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters, copies of leases, a copy of an application for a business

license, and copies of postmarked letters, receipts and photographs. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains a copy of an affidavit from [redacted] who arrived in the United States in 1984. [redacted] states that he knows that the applicant came to the United States in 1981, because the applicant told him that he planned to arrive in the United States in May 1981, and because the applicant called him and wrote him several times after arriving in the United States. The affiant states that the applicant told him that he applied for immigration benefits in 1987 but that his application was not accepted. In addition, [redacted] states that since arriving in the United States in 1984, he has seen the applicant at get-togethers and social functions. However, the director's decision notes that when United States Citizenship and Immigration Services (USCIS) had attempted to verify the contents of [redacted] affidavit by contacting the affiant, the affiant stated that the applicant never wrote to him. Due to this inconsistency, the statement of [redacted] has minimal probative value.

Applicant has also submitted a copy of the affidavit of [redacted] who states that he met the applicant in 1982 at Usman Imports. [redacted] states that the applicant told him that he entered the United States in 1981. The affiant states that he knows that the applicant has been continuously residing in the United States since 1981 because he and his family have attended many picnics, movies and parties with the applicant. However, when USCIS requested documentation from the affiant to verify his presence in the United States during the requisite statutory period, the affiant did not submit any documentation. Therefore, due to the inability to verify [redacted] presence in the United States during the requisite period, [redacted] affidavit has minimal probative value.

The record contains an affidavit from who states that the applicant stayed with him in his residence from 1981 until 1989. The applicant also submitted copies of two leases, signed by the applicant and [redacted], as sublessee and sublessor respectively. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). The first lease is for premises [redacted], in La Palma, California for the period of time from May 1, 1981 until April 30, 1982. The second lease is for the premises at [redacted] in Anaheim, California for the period of time July 1, 1984 to June 30, 1984. These leases would be evidence in support of the applicant's residence in the United States during the requisite statutory period. However, the first lease was signed by the applicant on May 1, 1981. This is inconsistent with the applicant's testimony, at the time of his interview on the instant application, that he did not enter the United States until May 14, 1981. In addition, as noted in the decision of the director, a 1988 Form W-2 submitted by Mr. [redacted] as evidence of his residence in the United States during the requisite period shows that he was residing in apartment [redacted] at [redacted] not apartment [redacted]. Due to these inconsistencies, the affidavit of [redacted] has minimal probative value.

The applicant submitted the affidavit of [redacted] who moved to the United States in 1984. Mr. [redacted] states that he knows that the applicant arrived in the United States in 1981 because the applicant came to visit the affiant in Pakistan prior to going to the United States, and that the applicant wrote and

called after his arrival in the United States. In addition, the affiant states that when he moved to the United States in 1984 he saw the applicant several times in the United States.

The record contains an affidavit from who states that he and his family were very excited to visit the applicant in 1981 when the applicant arrived in the United States. [redacted] states that the applicant visited him and called him in Texas. However, as stated in the director's decision, the documents submitted by [redacted] to verify his presence in the United States indicate that [redacted] may not have been present in the United States for the duration of the requisite period. Therefore, Mr. [redacted] affidavit has minimal probative value.

The record contains a copy of an employment verification letter and a copy of a termination of employment letter from [redacted], President of Usman Imports. [redacted] states that the applicant worked for Usman Imports as a stocker from September 1981 until December 1987. However, the director's decision notes that when USCIS attempted to verify the contents of the employment verification letter of [redacted] by contacting the affiant, the affiant was not able to recall the period of time for which the applicant was working for Usman Imports. Due to the inability to verify the information contained in the letter, the statement of [redacted] has minimal probative value.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with him, which 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 in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. In addition, the many discrepancies among the witnesses' statements detract from the credibility of the applicant's claim. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). Therefore, they have minimal probative value.

Furthermore, the employment verification letter of [redacted] fails to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letter does not state how the witness was able to date the applicant's

employment. It is unclear whether the witness referred to his own recollection or any records he or the company may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these additional reasons, this document has minimal probative value.

The remaining evidence in the record is comprised of a copy of an application for a business license, copies of postmarked letters, copies of receipts, copies of photographs, the applicant's statements, and the instant Form I-687. The applicant has submitted a copy of an application for a business license for a partnership with [redacted] for a business called Maal Imports. **The application was signed in 1985.** Although this application is evidence in support of the applicant's residence in the United States in 1985, it is not sufficient evidence of continuous residence for the duration of the requisite period.

The applicant has also submitted copies of postmarked envelopes sent to his attention in care of [redacted] with the name of the applicant appearing at the bottom left or top left corner of the letter. As stated above, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Several of the envelopes contain postmarks which are illegible and are therefore of minimal probative value. The legible postmarks are from 1987 and 1988. Although these envelopes are evidence in support of the residence of the applicant in the United States in 1987 and 1988, they are not sufficient evidence to establish the continuous residence of the applicant for the duration of the requisite period. In addition, there is no evidence in the record that the applicant lived with [redacted] during the requisite period, and the applicant did not list the address of [redacted] as a residence on the instant application. For these additional reasons, these envelopes are of minimal probative value.

The applicant has also submitted copies of several receipts dated 1986, 1987 and 1988. Although these receipts are evidence in support of the presence of the applicant in the United States in 1986, 1987 and 1988, they are not sufficient evidence to establish the continuous residence of the applicant for the duration of the requisite period.

Finally, the record contains several photographs. The persons and locations in the photographs have not been identified by name and the photographs are undated. Copies of photographs do not establish the applicant's continuous residence throughout the requisite period.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's

residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.