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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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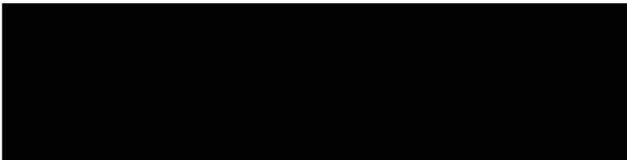
FILE: MSC-04 316 10062 Office: CHICAGO  
MSC-08 012 11059 – APPEAL

Date: **NOV 03 2009**

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. 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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

Perry J. Rhew  
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 in Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native Pakistan who claims to have lived in the United States since October 1981, 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 August 11, 2004. 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 period.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period. Counsel submits no additional evidence with the appeal.

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.

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.

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 record reflects that the applicant, who was born on July 23, 1973, and who claims that he entered the United States on October 1981 and has continuously resided in the country since 1981, was around 8 years old when he allegedly entered the United States. However, the applicant does not submit any school or medical records to establish his residence in the United States during the 1980s. It is reasonable to expect a child of 8 years old residing in the United States in 1981 to have school and medical records, particularly immunization records. The applicant does provide a reasonable explanation as to why he is unable to provide his school or medical records. Additionally, the applicant does not provide any supporting documentation to establish that he entered the United States in 1980, does not provide any credible evidence of

how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was around 8 years old, and therefore, would have had to have been provided for and cared for by an adult.

The applicant claims that he resided with his brother during his minor years and was cared for by his brother. In support of such statement, the applicant submitted an affidavit from [REDACTED], whom the applicant identified as his brother on a prior Form I-687 he filed in 1990. The affiant in essence stated that "I reasonably know [the applicant]; that [the applicant] did in fact leave the United States on July 8 and returned on August 1987." The affiant did not provide any information about the applicant's alleged entry into the United States in 1981, did not indicate any relationship with the applicant, and did not provide any document of his own identity and residence in the United States during the requisite period. The affiant did not provide any information about the applicant's life in the United States, did not submit any document demonstrating his relationship with the applicant and did not seem to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. In view of the minimalist information and the substantive deficiencies of the affidavit, the AAO finds that the affidavit has little probative value as credible evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

The applicant claims on the Forms I-687 he filed in 1990 and 2004, that he made two trips outside the United States to Pakistan during the 1980s. The first trip was from July to August 1987 and the second trip was from September to October 1988. The applicant submitted no documentation or other objective evidence to establish his entries into the United States during the 1980s. The record reflects that the earliest objective documentation submitted by the applicant of his residence in the United States, dates from 1989. The record however, includes a copy of a Pakistani passport issued to the applicant in Pakistan on July 7, 1988. The passport contains a non-immigrant visa issued to the applicant at the United States Embassy in Karachi, Pakistan, on September 5, 1988, which the applicant used to enter the United States through New York City on October 11, 1988. Since the applicant did not indicate any trip to Pakistan in July 1988, the issue date of the passport strongly suggests that the applicant was in Pakistan at the time the passport was issued as opposed to residing in the United States as claimed. The contradiction in the record regarding the applicant's initial entry and continuous residence in the United States, calls into question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

In the absence of any objective evidence to the contrary, the documented entry by the applicant on October 11, 1988, is most likely the applicant's first entry into the United States. Therefore, the applicant has failed to establish by a preponderance of the evidence that he meets the continuous residence requirement for adjustment of status under section 245A of the Act.

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.

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.