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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[Redacted]

FILE: [Redacted]

Office: CHICAGO

Date: NOV 16 2009

MSC 05 251 14742

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.

Perry 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, Chicago. 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, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) erred in its decision by not taking into consideration the evidence submitted by the applicant.

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 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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends, a letter from his previous employer, copies of two apartment leases and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The applicant's sworn affidavit and the USCIS adjudicating officer's notes reveal that during the Form I-687 application interview, the applicant claimed to have first entered the United States without inspection on March 4, 1981.

The applicant submitted a copy of two apartment leases indicating that he leased an apartment at [REDACTED] from July 1, 1981 to June 30, 1982 and [REDACTED] from May 1, 1986 to a date that is not legible. The evidence is inconsistent with other evidence of record. On his initial Form I-687 application, the applicant claimed to have resided at [REDACTED], from June, 1989, and he did not list the [REDACTED] address as one of his residences. The applicant did not claim on his current Form I-687 application to have resided at either of the addresses listed on the apartment leases.

The record also contains inconsistencies about the applicant's employment during the requisite period. The applicant claimed on his current Form I-687 application to have been employed at [REDACTED] from 1982 to 1989. In his initial Form I-687 application, the applicant claimed to have been employed at [REDACTED] as a manager from June, 1981, to present, or May 3, 1990, the date of filing the application. In a letter signed by [REDACTED] Mr. [REDACTED] stated that the applicant was employed from January, 1981, to March, 1990, as a manager. There is no evidence of record explaining the inconsistencies in employment information on the Forms I-687.

The applicant's Form G-325A, Biographic Information, signed by the applicant under penalty of perjury and filed in connection with his Application to Register Permanent Resident or Adjust Status (Form I-485) reveals that the applicant resided in Karachi, Pakistan, from 1985, until March, 1989.

The record contains a copy of the applicant's multiple B2, visitor for pleasure nonimmigrant visa to the United States from the American Consulate's office in Karachi, Pakistan on January 30, 1989. A copy of the applicant's Form I-94 Departure Record shows the applicant was admitted into the United States on March 30, 1989 at New York, New York. This coincides with the information given by the applicant on his Form G-325A.

The director states in his decision and the applicant claimed on his initial Form I-687 application that his children, [REDACTED] and [REDACTED] were born in Pakistan on September 30, 1985, and September 16, 1987, respectively. There is no evidence of record that the applicant traveled to Pakistan, or that his wife traveled to the United States approximately nine months prior to the birth of these children. Further, the applicant's marriage certificate indicates that he was married in Pakistan on January 21, 1983. This absence is not listed on either of the applicant's Form I-687s.

The inconsistencies regarding the applicant's absence from the United States, employment and dates of residence in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's continuous residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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).

The applicant submitted a letter from [REDACTED] and affidavits from [REDACTED], and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] attests to having personally known the applicant since 1980; [REDACTED] and [REDACTED] attest to having known the applicant since April, 1981, and [REDACTED] attests to having known the applicant since 1985. [REDACTED] states that they resided

together at [REDACTED] during April 1981 to October, 1986. The witnesses attest to the applicant's good moral character but provide no other information about the applicant.

The letter and the affidavits submitted do not contain sufficiently detailed descriptions to establish the reliability of their assertions. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed affidavits to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies, shared activities and the manner he entered the United States.

The witnesses do not provide 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 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. Given the applicant's reliance upon documents with minimal probative value, and the noted inconsistencies in the evidence provided, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the requisite period.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

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.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.