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

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FILE: [redacted] Office: CHICAGO Date: NOV 1 6 2009

MSC-04 267 10049

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 J. Rhe
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 of India who claims to have lived in the United States since May 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 June 23, 2004. The director determined that the applicant has not established that he filed for class membership in one of the legalization class action lawsuits listed above. The director concluded that on this basis the applicant is ineligible to adjust to temporary resident status and denied the application.

On appeal, counsel asserts that the applicant filed for class membership under one of the legalization class action lawsuits. Counsel cites to the employment authorization issued to the applicant as well as other applications and correspondence in the record in which the applicant is recognized as a class member. Counsel further asserts that based on these documents, the applicant has established that he is a class member in one of the legalization class action lawsuits.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The record reflects that the director did not issue the NOID as required under the CSS/Newman Settlement agreement before deciding to deny the application on December 19, 2005. The AAO agrees with counsel that the documentation in the record established by a preponderance of the evidence that the applicant is a class member in one of the legalization class action lawsuits.

The record includes a copy of an employment authorization issued to the applicant under section 274A.12(C)(24) of the Immigration and Nationality Act (Act). The record also includes a copy of a Form I-485 (Application to Register Permanent Residence or Adjust Status) that the

applicant filed on June 3, 2002. On that form, the director noted that the applicant is "in class" and issued a decision denying that application on the grounds that the applicant has failed to establish that he meets the continuous unlawful residence requirement under the LIFE Act and not on class membership. The AAO notes that since the director adjudicated the Form I-485 application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements, the portion of the director's decision to deny this current application (Form I-687) on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn. The application will be adjudicated on its merit to determine whether the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement from before January 1, 1982 through the date of filing the application.

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 AAO determines that the applicant has failed to meet his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. At his legalization interview on July 25, 2005, the applicant stated that he entered the United States in May 1981 and resided continuously in the country except for two brief trips to India from May to June 1987 and from March to April 1995.

On a prior Form I-687 the applicant filed on March 1, 1990 and the accompanying affidavit completed under penalty of perjury on February 28, 1990, the applicant indicated that he entered the United States in May 1981 and resided continuously in the country except for one brief trip outside the United States to India from May to June 1987. The applicant indicated the following as his addresses and employers in the United States since his first entry:

Addresses:

- [redacted] from May 1981 to October 1986;

- [redacted], from November 1986 to June 1989; and
- [redacted] since July 1989.

Employment:

- [redacted], from May 1981 to December 1982;
- [redacted] in Downtown Chicago, from January 1983 to April 1986;
- [redacted] from May 1986 to June 1989; and
- [redacted], since July 1989.

On the Form I-687 the applicant filed on June 23, 2004, he indicated the following as his addresses and employers in the United States since his first entry:

Addresses:

- [redacted] from May 1981 to August 1983;
- [redacted], from September 1983 to July 1984;
- [redacted] from July 1984 to February 1987;
- [redacted], from February 1987 to March 1990;
- [redacted] from March 1990 to August 1995;
- [redacted], from August 1995 to July 1999; and
- [redacted], since July 1999.

Employment:

- [redacted], from December 1981 to August 1983;
- [redacted] from September 1983 to March 1985;
- [redacted], from March 1985 to June 1989;
- [redacted], from July 1989 to February 1993;
- [redacted] from February 1993 to August 1995; and
  Self-Employed cab driver, Chicago, Illinois, since August 1995.

The record includes a letter signed by [redacted] who identified himself as the owner of [redacted] in Chicago, Illinois, dated November 2, 2005, attesting that the applicant has "worked for our store during the year of 1984." Also in the record is a notarized letter from [redacted] dated May 13, 2002, stating that the applicant shared an apartment located at [redacted] with him for some months when the applicant first came to the United States in 1981.

These letters contradicted the applicant's statements on the two Form I-687s regarding his residence and employment in the United States during the 1980s. In fact, the applicant did not claim [redacted] as one of his employers in the United States, and did not indicate [redacted] as one of his addresses in the United States. Therefore, it is abundantly clear that the applicant has provided conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to clarify or explain the discrepancies. The conflicting statements and documents discussed above cast considerable doubt on 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. The contradictions also call into question the credibility and reliability of the two letters listed above as well as other documents submitted by the applicant that attest to his continuous residence in the United States from before January 1, 1982 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. *See 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.*

As discussed above, the applicant has provided conflicting statements and documentation in support of his application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – letters and affidavits from individuals who claim to have known the applicant in the United States during the 1980s, a photocopy of a portion of the vehicle registration for a 1983 Honda, as well as a copy of a merchandise receipt from [redacted] dated May 1, 1985, with handwritten notation of the applicant's name and an incorrect address – is suspect and not credible.

For example, the record includes: (1) a letter from [redacted] dated November 17, 2005, stating that he has known the applicant since 1981, that he was the applicant's primary physician from 1981 to 1989, and that "our records indicate that [the applicant] was treated during the years of 1984 and 1988; and (2) an undated letter from [redacted] of Devon Community Medical Center in Chicago, Illinois, stating that the applicant was under his care and that the applicant visited the outpatient clinic at Columbus Hospital in Chicago, between May 1986 to June 1987 for various ailments like lower back ache and upper respiratory infections.

The letter from [redacted] did not identify the applicant's address during the period the applicant was under his care and the address identified by [redacted] as the applicant's address during the period May 1986 to June 1987, is inconsistent with the address claimed by the applicant for the same time period. The letters did not specify the precise dates the applicant received treatments despite the fact that [redacted] claimed that his information about the applicant was taken from "our records," nor did he identify the records he was referring to. The letters are not accompanied by medical records specifying dates of visits and the nature of the

visits. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* In view of the substantive deficiencies and contradictions, the AAO finds that the letters from [redacted] and [redacted] have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The affidavit by [redacted] who claims to be the president of [redacted] in Chicago, Illinois, dated May 13, 2002, attests that he delivered a sofa/sleeper to the applicant at the applicant's apartment located at [redacted] of [redacted] back in 1983. This affidavit is vague as to the applicant's address and the specific date of delivery. [redacted] did not supplement this affidavit with a copy of the sales receipt which would have provided specific information such as the date the sofa/sleeper was sold to the applicant, the applicant's complete address and the specific date of delivery. Thus, the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The photocopy of a portion of the vehicle registration for a 1983 Honda Hatchback which the applicant submitted as evidence of his residence in the United States, does not bear the name and address of the applicant or the date of issuance. The document cannot be attributed to the applicant. Therefore, it has little probative value as evidence of the applicant's residence in the United States during the requisite period.

As for the letters and affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, they have minimalist format with very few details about the applicant's life in the United States, and the nature and extent of their interactions with the applicant over the years. [redacted] submitted two letters dated July 7, 2005 and November 2, 2005 regarding the applicant's employment at [redacted] in Chicago, Illinois, that are contradictory to each other and contradictory to the employment information provided by the applicant on the two Form I-687s in the file. The letters are not accompanied by pay stubs, earnings statements or tax records to show that the applicant was employed by the company as indicated. Also, the letter submitted by [redacted] regarding the applicant's address in 1981 is contrary to the address provided by the applicant for the same period. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

Additionally, the authors do not seem to have direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The authors did not provide documentation to establish their own identities and their residence in the United States during the 1980s. The letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. In view of these

substantive deficiencies, and the applicant's overall lack of credibility, the AAO finds that the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

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 analysis of the evidence, 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.