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U.S. Department of Homeland Security
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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[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 30 2009

MSC 06 041 12454

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:

SELF-REPRESENTED

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, New York. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. The director indicated that the applicant had stated that his wife had never been to the United States but had not adequately explained how he had fathered his son [redacted] who was born in Pakistan on September 16, 1987, given his claim that he first entered this country in September 1981, and did not travel outside the United States until December 2, 1987. The director noted that the applicant had submitted a lease agreement which names him as the sole tenant of a unit but had not submitted any documentation establishing he had used (or paid for) any utilities during the period of the lease.

On appeal, the applicant states the decision of the director is arbitrary, capricious, and an abuse of discretion. The applicant acknowledges that the director rightly concluded that in order for his son to be born in September 1987, he had to be physically present with his wife in Pakistan but argues that his son [redacted] was actually born on September 16, 1988. He further states that he recalls submitting his son's birth certificate for the record on a previous occasion when he applied for advanced parole. The applicant argues that the director erroneously points out that the lease document for the period from 1981 until 1984 did not address the use of gas, electric and telephone bills and argues that the neglect of the landlord not to specify this requirement on the form should not be attributed to the primary tenant.

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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. The applicant's lease agreement for [redacted] at [redacted] in Brooklyn, New York, from November 15, 1981 until November 14, 1984.

2. A letter to the applicant dated November 2, 1981, addressed to the applicant at [redacted] at [redacted] in Brooklyn, New York, from [redacted] of BM U.S. Building Maintenance Co., Inc., informing him that unless employment authorization documentation was submitted, his employment application would be rejected.

3. A letter to the applicant dated August 27, 1982, from [redacted] in New York, attorney for his landlord, informing him that unless his August 1982 rent in the amount of $316.50 was paid within three days, his lease would be automatically terminated.

4. An employment verification letter from [redacted] of Indian Spice World Inc. in New York, who states the applicant was employed by the firm from December 1981 to December 1983.

5. An employment verification letter from [redacted] of Rockware Leather Goods Co., Inc. in New York, who states the applicant was employed by the firm from February 1984 to December 1985.

6. An employment verification letter from [redacted] of John's House of Carpets in Jackson Heights, New York, who states that the applicant was employed by the firm from January 1986 until January 10, 1988.

7. A letter to the applicant dated October 22, 1987 from [redacted] from New York Telephone in New York, who states his application for a new telephone connection would be denied if additional information was not forthcoming.

On appeal, the applicant acknowledges that the director rightly concluded that in order for his son to be born in September 1987, he had to be physically present with his wife in Pakistan but argues that his son [redacted] was actually born on September 16, 1988. He further states that he recalls submitting his son's birth certificate for the record on a previous occasion when he applied for advanced parole. A copy of his son's birth certificate is not in the record of proceedings and no further documentation has been submitted on appeal. The applicant correctly states that his lease (Item # 1 above) did not specify who would pay the utilities for the Unit during the period of the lease. However, considering the objection to approval listed by the director, he has not submitted any documentation showing that either he or his landlord paid his utilities during the term of his lease. It is determined that the applicant has not overcome either of the objections raised by the director regarding his probable residence abroad prior to the birth of his son [redacted] and the use and payment of necessary utilities during the terms of his lease.

The letter to the applicant from [redacted] (Item #2) lists his address as [redacted] at [redacted] and not as Unit #2A as claimed by the applicant. The letter to the applicant from [redacted] (Item # 3) dated August 27, 1982, states his rent is overdue for August 1982, and lists the amount to be paid as $316.50 although the rental agreement specifies no late rental payment penalties and the monthly amount to be paid is $300 on the 15th of each month. Additionally, the employment verification letters (Items # 4 through # 6) do not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The letter from [redacted] (Item # 7) does not establish that the applicant resided in the United States during the entire requisite period.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec.

582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted residential history on his Form I-687 is accompanied by inconsistent and/or incomplete evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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