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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
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PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 31 2011

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed an Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA) pursuant to the terms of the Northwest Immigrant Rights Project Settlement agreements (NWIRP) on August 2, 2009. The director denied the application noting that the applicant failed to establish both his class membership and his continuous residence in the United States for the relevant period. The applicant filed a timely appeal which is now before the Administrative Appeals Office (AAO). 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 NWIRP Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had entered the United States in lawful nonimmigrant status or that he resided continuously in the United States throughout the relevant period.

On appeal, the applicant states that he made "unintentional honest mistakes" in his previous filings and that he entered the United States before January 1, 1982 as a visitor and was continuously present during the requisite period of November 6, 1986 through May 4, 1988. He submits additional evidence on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO affirms the director's decision that the applicant has not established his class membership under NWIRP or his continuous residence in the United States during the relevant period.

On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al,* 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

> 1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who
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> (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency ("QDE"), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or
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> (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or

inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),

ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

(1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

(2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.

(3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of

(a) reinstatement to nonimmigrant status;
(b) change of nonimmigrant status pursuant to INA § 248;
(c) adjustment of status pursuant to INA § 245; or
(d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a not a member of the NWIRP class as enumerated above because the record of proceeding contains inconsistent information about his entry into the United States. Although on appeal the applicant states that he first entered with a visitor's visa,

the record contains a Form I-687 signed by the applicant on March 26, 1990 stating that the applicant first entered the United States in September 1981 without inspection through the border between Mexico and Texas. The record also contains a sworn statement signed by the applicant on March 28, 1990 stating that he entered the United States without inspection. Therefore, the evidence does not establish that the applicant entered as a nonimmigrant. The applicant's Form I-687, signed on January 25, 2010, and sworn statement on June 24, 1020 are inconsistent with his previously filed Form I-687 and sworn statement. The director noted these inconsistencies in her decision. On the Form I-694, the applicant states that any inconsistencies are "minor" and have been "adequately explained." However, the applicant's only explanation on appeal is that he made an "unintentional and honest mistake." 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 applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant's explanation is not sufficient to reconcile the two different accounts of his first entry into the United States. As the applicant did not enter the United States as a nonimmigrant prior to January 1, 1982, he is not a class member pursuant to the terms of the NWIRP settlement aggrements.

Additionally, the applicant is not eligible for temporary resident status under NWIRP because he has not established his continuous residence for the duration of the relevant period. 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 NWIRP Settlement Agreement, 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. NWIRP Settlement Agreement paragraph 8 at pp. 14-15.

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).

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.

The applicant submits the following in support of his continuous residence in the United States during the relevant period:

- Affidavits from [redacted] The affiants all indicate that they knew the applicant during the requisite period; however, their statements do not contain sufficient detail to be considered probative. The affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with him, or how they had personal knowledge of his presence in the United States. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows the applicant and that he 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. Further, in their affidavits, [redacted] stated that the applicant lived at [redacted] from 1983 to 2007. In his Forms I-687, the applicant indicated that he resided at [redacted] from September 1981 July 1984. As stated previously, 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, supra.* Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

- A notarized employment letter from S & A Contracting Corp. dated January 15, 2010 and signed by [redacted] states that he has known the applicant since 1981 and that the applicant has worked on a daily basis in construction with different companies. Although the letter states that it is an "affidavit of employment," [redacted] never states that the applicant worked for S & A Contracting Corp. Although the statement is on company letterhead and notarized, the letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that the letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records. If records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted if signed, attested to by the employer under penalty of perjury, and stating the employer's willingness to come forward and give testimony if requested. The statement from [redacted] does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- Two employment letters from [redacted] and signed by [redacted]. One letter is dated May 12, 1990 and the other is not dated. Both letters contain identical information with the exception that the letter dated May 12, 1990 has a number "1" typed over the number "8" in the date "1988" so that it reads "1981." [redacted] did not initial the change nor is there an explanation from [redacted] regarding the inconsistent employment dates in the two letters. As stated previously, 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, supra.* Although the statement is on company letterhead, the letter fails to meet the regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), described in the preceding paragraph. Further, the statements from [redacted] provide inconsistent information and can be accorded no weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- A notarized letter from [redacted] dated January 21, 2010 and signed by [redacted] states that the applicant has participated in Jum'aa prayer since the inauguration of the Masjid. In part #31 of the Form I-687 signed in 2010, the applicant listed this organization and stated that his affiliation began in 1987. In the Form I-687 signed in 1990, the applicant wrote the word "none" with regards to affiliations and associations. On appeal, the applicant also submitted a letter from [redacted] dated August 2, 2010 and signed by [redacted] states that the applicant participated in Jum'aa prayer at the Madina Masjid from 1982 to

1988 and occasionally celebrated Muslim holidays. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters submitted do not include much of the required information and do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The letters are not deemed probative or credible because they conflict with the applicant's Forms I-687. The letters provided by the applicant, therefore, are not deemed credible and shall be afforded little weight.

- A letter on [redacted] letterhead dated December 6, 1981 and signed by [name illegible]. The letter states that the applicant was diagnosed with acute Myocardial Infarction with three-vessel disease and that he was treated in the M.I.C.U. for two weeks. Although this letter may indicate presence in the United States on the date issued, it can only be accorded minimal weight as evidence of residence.

- A copy of a lease dated December 15, 1981 for a term of one year from December 15, 1981 to December 14, 1982 at [redacted] The lease is signed by [redacted] and the applicant. The record also contains a copy of a rent receipt dated March 16, 1982 signed by [redacted] The applicant's Forms I-687 indicate that he lived at the address on the lease from September 1981 to July 1984. The record contains no lease for September 1981 to December 14, 1981 or for December 15, 1982 to July 1984. As noted above, two of the applicant's witnesses indicate that the applicant resided at this address from 1983 to 2007. There is no indication from the landlord or the applicant that he resided at this address from 1983 to 2007.

- Copies of a receipt from [redacted] dated February 18, 1985 and a receipt from [redacted] dated January 14, 1983. Both receipts list the applicant's name and include addresses consistent with the applicant's Forms I-687. Although receipts for services and purchases may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence.

Finally, the AAO notes that the applicant indicates on the 1990 Form I-687 that he was absent from the United States from February 12, 1987 to April 16, 1987. This absence exceeds the 45 day limit for a single absence during the relevant period.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has

exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being." The applicant has not addressed this absence on appeal.

In response to the director's notice of intent to deny (NOID), the applicant admitted his absence from the United States from February 12, 1987 to April 16, 1987 and stated that he was unable to return to the United States because he was being treated for his heart condition and was told not to travel by a doctor. The record contains no evidence of the applicant's medical treatment in Pakistan. As he has not provided any evidence of an "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has 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 as well.

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