

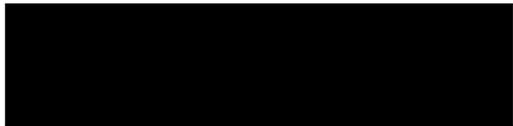
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U.S. Citizenship  
and Immigration  
Services

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LI



FILE: [REDACTED]  
MSC-05-330-10996

Office: NEW YORK

Date: SEP 25 2007

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not submitted sufficient documentation to show he entered the United States on or before January 1, 1982 and maintained continuous residence until May 5, 1988. As a result, the director denied the application.

On appeal, the applicant stated that the director's decision is arbitrary and an abuse of discretion. The applicant reviewed the evidence submitted and stated that he had provided credible and verifiable affidavits in support of his claim.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on August 26, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED] from May 1981 to August 1984; [REDACTED] from September 1984 to March 1988; and [REDACTED] from April 1988 to April 1991. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed, "none." At part #32 where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed only one family visit to Pakistan during the requisite period, from June 1987 to September 1987. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit to Pakistan spanned the complete months of July and August, it must have exceeded 45 days. If the applicant fails to provide an explanation for the delay in his returning to the United States, he will be found not to have resided continuously in the United States throughout the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only his work as a construction helper for L.K. Contracting Company in Brooklyn, New York from May 1981 to July 1988.

With his Form I-687 application, the applicant included a letter dated August 9, 2005 from L.K. Management, with a notarized signature by an individual whose name is illegible. The declarant stated that the applicant started off as a freelance construction worker with L.K. Contracting Company in May 1981 and was hired as a permanent employee in July 1983. The applicant worked with the company until July 1988. This letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not include the applicant's address at the time of employment, whether the information was taken from official company records, where the records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record indicates that an attempt was made on May 15, 2006 to contact L.K. Management at the number provided in the letter, but the number was not in service.

In his interview with an immigration officer on March 2, 2006, the applicant was asked whether he left the United States between January 1, 1982 and May 4, 1988. The applicant indicated he only departed one time during this period, when he went to Pakistan from June 1987 to September 1987. The applicant also indicated he had two children, and that one of his children was born September 30, 1988. The applicant was in the United States when both of his children were born. The applicant's wife has never been to the United States. The applicant's statements in his interview are inconsistent with each other and with his statements on Form I-687. Specifically, since the applicant's wife has never been to the United States, his children must have been born outside the United States. The applicant indicated the only time he left the United States during the requisite period was from June 1987 to September 1987. However, the applicant must have been outside of the United States sometime between December 1987 and January 1988 if the applicant's child was actually born on September 30, 1988 outside of the United States. This inconsistency calls into question whether the applicant continuously resided in the United States during the requisite period.

In response to a Notice of Intent to Deny issued on May 15, 2006, the applicant submitted a letter from the Muslim Community Center of Brooklyn, Inc. This letter contains the notarized signature of [REDACTED], member of the Board of Trustees. In this letter, [REDACTED] stated that the applicant "has been participating in Friday congregations off and on since 1982 to date." This letter does not specifically confirm that the applicant resided in the United States during the requisite period. In addition, the letter is inconsistent with the information provided on Form I-687. Specifically, where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant omitted his involvement with the Muslim Community Center of Brooklyn, Inc. and instead listed, "none." Lastly, this letter does not conform to regulatory standards for attestations by churches, unions, or other organizations. Specifically, the letter does not state the address where the applicant resided during the membership period, establish how the author knows the applicant, or establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant also provided a medical certificate explaining that his wife was suffering from a medical condition and was under medical treatment from June 6, 1987 to September 8, 1987. The applicant offered this evidence in support of his statements indicating a family emergency kept him from returning to the United States within 45 days of departing to Pakistan in 1987. This letter tends to show the applicant knew his wife was ill prior to his departure to Pakistan. The letter calls into question whether emergent reasons actually kept the applicant from returning to the United States within 45 days

of his departure. Since the applicant was absent from the United States for a period exceeding 45 days and he has not established that his return to the United States could not be accomplished within the time period allowed due to emergent reasons, the applicant is found not to have resided continuously in the United States. Although the director indicated in her decision that the medical letter was not amenable to verification, contact information was provided in the letter. There is no indication in the record that any attempt was made to verify the letter.

The applicant also provided an affidavit from his wife, which states that the applicant "was in the United States in 1981 and came to Pakistan in the year 1987 again left for the USA after four months of stay in Pakistan." This letter does not specifically confirm the applicant resided in the United States continuously during the requisite period. Although the director indicated this affidavit is self-serving, this affidavit should have been considered on its merits. As a result, this aspect of the director's decision is withdrawn.

The applicant also provided a declaration from [REDACTED]. In this declaration, the declarant confirmed that he has known the applicant since 1981 from Pakistan. This declaration also states that the applicant made "innocent exits" in 1987 and 1995. This declaration does not confirm the applicant resided in the United States throughout the requisite period.

In denying the application, the director determined the applicant had not submitted sufficient documentation to show he entered the United States on or before January 1, 1982 and maintained continuous residence until May 5, 1988. It is noted that the director misstated the residency requirements for temporary residence. Specifically, the applicant must show he maintained continuous unlawful residence until the date of filing, rather than until May 5, 1988. The filing period began May 5, 1987, and ended May 4, 1988. 8 C.F.R. § 245a.2(a).

On appeal, the applicant stated that the director's decision is arbitrary and an abuse of discretion. The applicant reviewed the evidence submitted and stated that he had provided credible and verifiable affidavits in support of his claim. The applicant also questioned the director's statements that the medical documentation he included was not amenable to verification and that his wife's affidavit was self-serving. The applicant also explained his lack of evidence of his initial unlawful entry, noted that the director failed to address the letter from the Muslim community center, and suggested the applicant was treated differently than other similarly situated applicants. Lastly, the applicant stated that he was deprived of due process.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, has provided statements that are internally inconsistent and conflict with each other, and has submitted affidavits and letters that fail to conform to regulatory standards or do not specifically confirm the applicant resided in the United States throughout the requisite period. Specifically, the letters from L.K. Management and the Muslim Community Center fail to conform to regulatory standards, and the affidavit from the applicant's wife and the declaration from [REDACTED] fail to confirm the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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 amenability to verification. Given the contradictory statements contained in the applicant's I-687 application and record of his interview, and given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.