

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

FILE:

[REDACTED]

Office: NEW YORK

Date: JUN 27 2008

MSC 05 139 10186

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.

for *Michael T. Kelly*
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, New York. 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, on February 16, 2005. The applicant was interviewed on July 14, 2005. On February 14, 2006, the director issued a Notice of Intent to Deny (NOID) the application, noting that the applicant had not provided evidence of eligibility. The director denied the application on August 3, 2006, determining that the applicant had not demonstrated by a preponderance of the evidence that he resided in the United States for the requisite periods.

On appeal, counsel for the applicant contends that the affidavits the applicant submitted are from individuals with no reason to lie for the applicant. Counsel asserts that the affidavits submitted should be given evidentiary weight as per the settlement agreement. Counsel claims that although the applicant has been in the United States since 1981 he could not speak English when he arrived at the Los Angeles Airport in 1990 and that even though the applicant has resided in the United States since that time, he still can not communicate in English.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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).

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. *See* 8 C.F.R. § 245a.2(d)(6).

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 has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period.

On the Form I-687 filed on February 16, 2005 the applicant indicates that he last entered the United States in November 1980 without a visa. The applicant lists his addresses for the pertinent time periods as: [REDACTED] Brooklyn, New York from November 1980 to March 1988 and [REDACTED] Chicago, Illinois from April 1988 to December 1995. The only absence listed from the United States during the applicable time period is in February 1988 to visit his parents in Pakistan. The applicant indicates he performed odd jobs prior to his employment with "Metroplaton Constructions" as a helper from March 1984 to March 1988 in Brooklyn, New York and was an everyday laborer with no specific employer from April 1988 to December 1995 in Chicago, Illinois.

The record also includes five affidavits:

- An affidavit dated June 29, 2001 signed by [REDACTED] who declares that he has known the applicant since childhood and met him in the United States when the affiant came to the United States in 1985. The affiant states: that as he and the applicant were close friends they saw each other almost every day; that the applicant lived continuously in Brooklyn, New York in the years of 1986 and 1988; and that the applicant was physically present in the United States from November 1986 to May 1988.

- An affidavit dated June 25, 2001 signed by [REDACTED] who declares: that the applicant is his close friend and he has known the applicant since 1985 when the affiant entered the United States; that the applicant was residing at [REDACTED] in Brooklyn, New York in November 11, 1986 to May 1988; that the applicant was physically present in the United States from 1985 to December 1988; and that the affiant and the applicant used to see each other quite often. _____
- An affidavit dated June 29, 2001 signed by _____ who declares that he has resided in the United States since 1980 and has known the applicant since 1981. The affiant also states that he and the applicant used to live in Queens in 1981 and that the applicant lived in his neighborhood from 1981 to 1984. A second affidavit dated June 29, 2005 signed by [REDACTED] who declares: that he is a US citizen currently residing in New York; that he has known the applicant since 1981; that he and the applicant lived together from 1981 to 1984; and that he and the applicant are good friends and see each other quite often.
- An affidavit dated June 30, 2001 signed by [REDACTED] who declares that he has resided in the United States since 1974 and that the applicant is his good friend. The affiant further declares that he met the applicant in Queens in December 1981 and that he and the applicant used to see each other in the years 1981 to 1984 as he was also living in Queens during that time.
- An affidavit dated April 4, 1990 signed by [REDACTED] who declares that the applicant left the United States in February of 1988 and that the affiant knows this because he was with him when the applicant was going to his country and the affiant gave the applicant some things to give to the affiant's parents in his country.

The record also contains an undated document signed by [REDACTED] who states that he has known the applicant since 1980 and that the applicant left the United States for Pakistan in February 1988 on P.I. Airline and returned to the United States by P.I. Airline to Mexico and that the applicant crossed the border to the United States at Mexico in March 1987. The record further contains photocopies of portions of the applicant's Pakistani passports: a passport issued in New York on November 11, 1988, expiring November 11, 1993; a passport issued in New York on September 18, 1989 expiring March 17, 1990; and a passport issued in New York on May 31, 2001 expiring May 30, 2006.

The AAO has reviewed the documentation submitted and observes that the affidavits and document submitted and the information on the applicant's I-687 present inconsistencies regarding the applicant's residence in the United States. The applicant's Form I-687, completed and signed by him, indicates that he lived in Brooklyn, New York from November 1980 to March 1988 and in Chicago, Illinois from April 1988 to December 1995. Two of the affiants state that the applicant lived in Queens in 1981, not Brooklyn, and indicate this was only to 1984. Two of the affiants state that the applicant lived in Brooklyn in the years 1986 and 1988 and was physically present in the United States from November 1986 to May 1988; however, the applicant states on the Form I-687 that he moved to Chicago in April 1988 and was outside the United States visiting his parents in Pakistan in February 1988. Another affiant's declaration corresponds to the applicant's statement that the applicant left the United States in February 1988. The undated document in the file signed by [REDACTED] indicates that the applicant left the United States for Pakistan in February 1988 on P.I. Airline and returned to the United States by P.I. Airline to Mexico and that the applicant crossed the border to the United States at Mexico in March

1987, information that is unclear as well as contradicting the applicant's indication that the only time he left the United States during the applicable period was in February 1988. The applicant does not explain his possession and submission of two Pakistani passports, one passport issued on September 18, 1989 during the validity period of the passport issued on November 11, 1988. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition to the inconsistencies noted above, the affidavits submitted do not provide detailed information regarding the circumstances and events describing how these individuals met the applicant, interacted with the applicant during the requisite period, or proof establishing that these individuals were actually in the United States during the period of time they attested to knowing the applicant. For the above reasons, the AAO finds that the affidavits are not probative.

These deficient and inconsistent affidavits, the undated document, and passports that were issued covering the same validity period, and the applicant's statements comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant 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. The appeal will be dismissed.

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