

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

L1

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: **NOV 28 2008**

MSC 05-224-10066

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 (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. The director denied the application, finding that because of inconsistencies in the record, the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period with previously submitted evidence and argues that because of his weak memory, he is unable to recall dates and details regarding his residence in the United States.

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 245(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).

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 issue in this proceeding is whether the applicant has established that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant’s friends. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits from [REDACTED] and [REDACTED] in support of his application. Affiant [REDACTED] states that he did not meet the applicant until August 1988. Because this affiant did not meet the applicant until after the requisite period ended, his testimony is not relevant to the applicant’s residence in the United States during that period.

While affiant [REDACTED] states that he knows that the applicant first entered the United States in June 1981, it is noted that the applicant indicated on a Form G-325A Biographic information that he submitted and signed under penalty of perjury in 2002 that he resided in Pakistan until September 1981. Mr. [REDACTED] also attests to having gone with the applicant when he attempted to first apply for legalization in New York in September 1987.

Similarly, affiant [REDACTED] states that he first met the applicant in Astoria Park in the summer of 1981. However, he does not state how he is able to date his first meeting with the applicant or indicate the frequency with which he saw the applicant during the requisite period. He fails to state whether there were periods of time during the requisite period when he did not see the applicant.

The affidavit from [REDACTED] states he knows the applicant has resided in the United States since 1981. However, he provides no details regarding when or where he first met the applicant. He also fails to state how he was able to determine the year he first met with the applicant. He does not state how frequently he saw the applicant during the requisite period. This affidavit is lacking in detail such that it can be accorded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Affiant [REDACTED] states that the applicant resided with him in Berkeley, California beginning in February 1981 and asserts that the applicant has continued to reside in the United States since that time. He does not provide an end date to his residence with the applicant in Berkeley, California. However, the applicant did not state that he ever resided in Berkeley or elsewhere in California on his previously noted Form G-325A Biographic Information or on his Forms I-687 in the record. The applicant's current Form I-687, submitted pursuant to the CSS/Newman Settlement Agreements in May 2005, indicates that the applicant's first residence in the United States was in Hillside, New York in June 1981. In the applicant's previously submitted Form I-687, submitted to establish class membership, the applicant stated that his first residence in the United States was also in Hillside, New York and that this residence began in October 1981. This inconsistency casts doubt on assertions made in this affidavit. Because this affidavit contains testimony that is not consistent with other evidence in the record and because it pertains to a period of time before the applicant has indicated that he entered the United States, no weight is accorded to this affidavit as evidence of the applicant's residence in the United States during 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. 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*, 19 I&N Dec. 582, 591-92 (BIA 1988).

These witness statements either are inconsistent with other evidence in the record or do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, when considered both separately and collectively, they have little probative value.

The affidavit from [REDACTED] contains significant inconsistencies with the applicant's Forms I-687 and the previously noted Form G-325A in the record regarding the applicant's residence in 1981. While the passage of time could account for discrepancies regarding exact dates of the applicant's residence in the United States, this affiant both claims that the applicant resided in the United States in February 1981, when the applicant has claimed that he resided in Pakistan until September 1981 and that the applicant resided

¹ This affidavit is dated April 20, 1990.

in Berkeley for an unspecified period of time beginning in February 1981 when the applicant has never claimed that he ever resided in California either during or subsequent to the requisite period. No explanation is provided for those contradictions. The inconsistencies noted above are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. 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.*

Therefore, based upon the foregoing, 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.