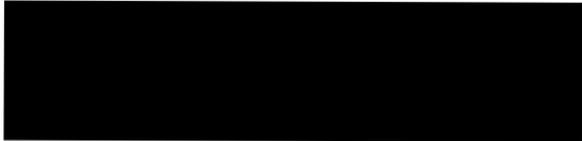


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



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FILE: [REDACTED] Office: CHERRY HILL Date:
MSC-04-260-10454

AUG 21 2009

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 "J. 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, Cherry Hill, and 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States during the requisite period.

On appeal, counsel for the applicant contends that the director's denial is arbitrary and an abuse of discretion because it is without specific and cogent reasons and is not in accordance with the CSS/Newman Settlement Agreements. Further, counsel claims that the applicant has provided credible and verifiable affidavits showing his continuous residence in the United States since before January 1, 1982 and throughout the requisite 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).

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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 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 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 sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

The applicant asserted during the interview that he had resided in the United States continuously since March 1981. Along with the Form I-687, the applicant submitted six affidavits and photocopies of two envelopes with stamps and postmarks. The record also contains four additional affidavits the applicant previously submitted for his LIFE Act application. The director considered all evidence in the record.

One of the envelopes bears an address that is not the applicant's address in the United States. Further, the date of the postmarks on both envelopes cannot be discerned. The AAO cannot verify or confirm when the envelopes were mailed or whether they were mailed to the applicant during the requisite period. For these reasons, the envelopes are not probative as evidence of the applicant's residence in the United States during the requisite period.

█ claims in his affidavit that the applicant worked as a salesman in his company, Moon International, from June 1981 to November 1982. █ states that the applicant was a casual laborer from June 1986 to December 1986 at Ghotra Waterproofing Corp. █ claims he employed the applicant at his restaurant, █, since February

1987. All three affidavits lack probative value since the authors fail to provide specific information about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, they fail to provide the applicant's address at the time of his employment, the exact period of the applicant's employment, the description of the applicant's duties with the company, whether or not the information was taken from official company records, and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. Further weakening the probative value of the affidavits from [REDACTED] is the applicant's failure to his employment with Shereen Mahal restaurant on his Form I-687.

[REDACTED] writes in his affidavit he drove the applicant to the JFK airport and saw him leaving the United States in September 1987. Nowhere in his affidavit does he indicate that he knew the applicant's whereabouts or what the applicant did in the United States during the requisite period. The affidavit lacks probative value as evidence of the applicant's residence in the United States during the requisite period.

The remaining six affiants generally declare they have known the applicant since 1981 or 1985. Some list the addresses where the applicant has been residing in the United States since 1981. One claims to have resided together with the applicant on Gregory Park Plaza in Jersey City, New Jersey, from July 1985 to August 1990. None describes with any detail the events and circumstances of how he or she first met the applicant in the United States, how he or she dates his or her meeting or acquaintance with the applicant in 1981 or 1985, or whether he or she has personal knowledge of where the applicant resided during the requisite period. Simply listing the addresses at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not show his continuous residence in the United States throughout the requisite period. 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. The AAO agrees with the director that none of the affidavits submitted is probative as evidence of the applicant's entry into the United States in March 1981 and continuous residence in the United States throughout the requisite period.

Further detracting from the credibility of the applicant is the fact that he had two children born in Pakistan in June 1983 and February 1988. The applicant stated during the interview that his wife came illegally to visit him in the United States in September 1982 and April or May 1987. The director specifically asked the applicant to produce documents such as a travel document, tickets, or an affidavit from his wife to prove that she came to the United States as he stated. No such evidence has been produced to validate the applicant's statement. On appeal, counsel for the applicant contends that the applicant could not obtain such evidence because his wife was smuggled into the United States during the requisite period and no smuggler would be willing to

issue an affidavit. Counsel also asserts that since the applicant has been divorced from his wife and has no contact with her or his children, he cannot obtain an affidavit from her. Counsel's explanation for how the two children were conceived in Pakistan at a time when the applicant states he was living in the United States is not persuasive. The evidence submitted, when considered together with the applicant's testimony, does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

The lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 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.

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