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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 06 101 20113

Office: NEW YORK

Date: JUL 29 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. 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.

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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. The director noted that even had the applicant provided evidence of physical presence during the required period, his absence from this country from April 4, 1985 to June 30, 1985 as indicated in his affidavit dated August 3, 2007 would have broken his period of continuous residence causing ineligibility. The director also noted the applicant had failed to address her concern as to her obtaining a G-1 visa in 1985 from the Department of State in Washington.

On appeal, counsel states the applicant's absence for more than 45 days in 1985 was due to his health related ailment. Counsel submits a letter with medical notes attached dated August 31, 2007 from [REDACTED] in New Delhi, India, who certifies that the applicant was under his treatment for a chronic bronchitis and asthma condition from May 1985 to June 2, 1985 and that he was advised to completely rest during that period. Counsel provides background material concerning his client and requests that the application be approved.

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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] Islam who state that they know the applicant has resided in the United States since 1981.
2. A notarized statement from [REDACTED] who states the applicant stayed with him from the winter of 1981 to 1986.
3. A notarized employment verification statement from [REDACTED] owner of Chirag News Stands who states the applicant worked for him from 1982 to 1985.
4. A letter dated February 17, 1983 from [REDACTED] Acting Director of Admissions of The Graduate Faculty of the New School for Social Research in New York addressed to the applicant in New Delhi, India, informing him to send his transcripts and financial documentation so he could be admitted as a foreign student.

The affiants (Items #1 and # 2 above) are vague as to how they date the beginning of their acquaintances with the applicant, how often and under what circumstances they had contact with him during the requisite period and they do not provide details to lend credibility to their claims. It is unclear on what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States throughout the requisite time period. As such, their statements shall be afforded minimal weight. Additionally, the employment verification letter (Item # 3) does not provide the applicant’s address at the time of

employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The admission letter (Item # 4) indicates that the applicant was living abroad in February 1983 as it was addressed to him in India and was written to facilitate his entry into the United States as a nonimmigrant student. Additionally, the applicant failed to list his absences from the United States and the foreign address or addresses where he resided in 1983 on his current Form I-687.

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).

On his current Form I-687, the applicant stated he left the United States in February 1982 to visit India and that he returned in May 1982. This trip abroad exceeded 45 days during the requisite period which ended on May 4, 1988 as explained above. It is determined that the applicant has not established continuous residence and physical presence due to his over two month absence in 1988. In his record of sworn statement dated June 6, 2006, the applicant stated that his second absence from the United States was on April 4, 1985 to visit India and that he reentered this country on June 31, 1985 with a "G1 visa." On appeal, counsel submits a letter with medical notes attached dated August 31, 2007 from [REDACTED] in New Delhi, India, who certifies that the applicant was under his treatment for a chronic bronchitis and asthma condition from May 1985 to June 2, 1985 and that he was advised to completely rest during that period. Even if the applicant was able to establish that his 1985 visit to India was delayed due to emergent reasons, it is determined that the applicant has not established continuous residence and physical presence due to his over two month absence in 1982.

Although this issue raised by the director was not addressed by counsel on appeal, the record contains a copy of the applicant's Form I-94, Departure Record, showing he was admitted to the United States on June 30, 1985 as a designated principal resident representative of a foreign government in G-1 nonimmigrant status. This entry effectively broke the continuity of any illegal continuous residence and physical presence claimed by the applicant.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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