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FILE: [Redacted]
MSC-05-193-12208

Office: NEW YORK

Date: JUL 30 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:

[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.

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, 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. The director determined that 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. The director noted the discrepancies in the record regarding the applicant's employment history. The director also noted that the affidavits submitted on behalf of the applicant were not credible. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director's action in denying the application was an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence, and that the discrediting of the affiants by the director was inappropriate. Counsel further asserts that there is no material misrepresentation in either the employment affidavits or the affidavits submitted by the applicant's acquaintances, and that the director failed to take all the affidavits into consideration before rendering her decision. Counsel also asserts that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident status.

The applicant was issued a Notice of Intent to Deny (NOID) by the AAO on June 2, 2009 requesting that he provide evidence sufficient to demonstrate his continuous residence in the United States since before January 1, 1982, and throughout the requisite period. The applicant has failed to respond to the NOID.

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) 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. See 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant indicated on his current Form I-687 application at part #30, where he was asked to list his residence history, that he resided at [REDACTED] in Flushing, New York from November 1980 to July 1983; [REDACTED] in Flushing, New York from August 1983 to May 1985; and at [REDACTED] in Brooklyn, New York from June 1985 to

December 1988. In contrast, the applicant indicated on his previously submitted Form I-687 application, that he signed and dated on November 5, 1981, at part #33 that he resided at [REDACTED] in Brooklyn, New York from April 1981 to December of 1987; and at [REDACTED] in Flushing, New York from January 1988 to August 1990.

The applicant indicated on his current Form I-687 application at part #33 where he was asked to list his employment history, that he was employed as a civil engineer by the Pak-Am Contracting Corporation located in Brooklyn, New York from 1983 to June 1994 at an annual salary of \$24,000.00. In contrast, the applicant indicated on your previous Form I-687 application at part #36 that he was employed by the Pak-Am Contracting Corporation from June 1981 to March 1990 at an annual salary of \$7,500.00.

The applicant indicated on his previous Form I-687 application at part #16 that he last entered the United States on April 2, 1981. On the accompanying form for determination of class membership in *CSS v. Meese* the applicant stated that his first entry into the United States was April 4, 1981. The applicant asserted in his sworn statement given before immigration officers on May 2, 1992, that he first entered the United States in January of 1981.¹ The applicant stated under oath during his immigration interview on January 10, 2006 that he first entered the United States in December 1981. In response to the director's Notice of Intent to Deny (NOID) dated February 1, 2006, the applicant indicated that he was present in the United States since 1980.

The applicant provided the following attestations as evidence:

- An affidavit from [REDACTED] in which he stated that the applicant resided with him at [REDACTED] in Brooklyn, New York from April 1981 to December 1987.
- An affidavit from [REDACTED] in which he stated that the applicant resided with him at [REDACTED] in Flushing, New York from January 1988 to August 1990.

The affiants' statements are inconsistent with the statements made by the applicant on his current Form I-687 application where he indicated that he resided at [REDACTED] in Flushing, New York from November 1980 to July 1983; [REDACTED] in Flushing, New York from August 1983 to May 1985; and at [REDACTED] in Brooklyn, New York from June 1985 to December 1988.

The applicant submitted the following letters of employment as evidence:

¹ The director erroneously stated in the Notice of Intent to Deny (NOID) that the applicant stated that he entered the United States through Mexico in October 1981. This statement of the director's is not supported by the evidence in the record and is withdrawn.

An affidavit from the Pak-Am Contracting Corporation dated March 30, 1992 in which the president of the company, [REDACTED] stated that the company employed the applicant as a “construction supervisor” from June 1981 to March 1990. The record of proceeding contains a printout from the New York State Department of State Division of Corporations that shows the Pak Am Contracting Corporation initial DOS filing date to be June 15, 1982. A letter of employment dated January 6, 1995 from [REDACTED] of the Pak-Am Contracting Corporation in which he stated that the company employed applicant as a subcontractor since 1982.

- A letter dated March 22, 2006 from [REDACTED] of Coney Realty in which he stated that his companies employed the applicant since 1981. Here, the record of proceeding contains a printout from the New York State Department of State Division of Corporations that shows the Coney Realty LLC’s initial DOS filing date to be April 30, 1996.
- A letter from Skating Systems Integration in which the president stated that the company employed the applicant on a contractual basis since 1981.
- A letter from [REDACTED] in which he stated that the applicant worked print jobs from him since 1981.
- Letters from [REDACTED], and [REDACTED] in which they stated that the applicant has participated on different construction projects for them since 1980 and 1981, respectively.

The statements of employment are inconsistent with statements made by the applicant on his current Form I-687 application. The statements made by [REDACTED] are contradictory to one another and are inconsistent with what the applicant indicated on his current Form I-687 application at part #33, where he stated that he was employed by the Pak-Am Contracting Corporation as a “civil engineer” from 1983 to June 1994. The statements are also inconsistent with the statement made by the applicant during his January 2006 interview when he stated under oath that he worked during the requisite period in construction, on call, and as needed for different construction companies. In addition, the letters of employment do not conform to regulatory standards for attestations by employers. Specifically, the letters do not specify the address(es) where the applicant resided throughout the claimed employment periods. [REDACTED] and [REDACTED] fail to specify the applicant’s dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). The declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted the following evidence:

- An affidavit from [REDACTED] of Muslim Community Center of Brooklyn, Inc. in which he stated that the applicant has prayed at the Makki Masjid mosque located in Brooklyn, New York during Friday prayers since 1981, and that the applicant has provided maintenance services to the mosque since that time.
- A letter from [REDACTED] in which he stated that he has known the applicant since 1981, that the applicant lived with him and that he and the applicant prayed together every Friday.
- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since December of 1981.
- A letter from [REDACTED] in which he states that he has known the applicant since 1981 and that the applicant has worked on construction projects in various capacities.
- Two letters from [REDACTED] in which he states that he has known the applicant since 1981 and that he registered his company, Skating Systems Integration in 1978.
- An affidavit from [REDACTED] in which he states that he has known the applicant since 1981 and that the applicant visited him at his apartment in Brooklyn, New York.
- An affidavit from [REDACTED] in which she states that she has known the applicant since December 1981, that she met the applicant at Royal Prudential Industry, Inc., where she was employed, and that the applicant came to her office once a week looking for work.
- An affidavit from [REDACTED] in which he states that he has known the applicant since 1981, that he met the applicant at the mosque where he prayed, and that he and the applicant would pray in his basement at least once a month.

These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Although the declarants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding the applicant's place of residence during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States throughout the requisite period. In the instant case, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the declarants' statements 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 attestations. To be considered probative and credible, witness statements must do more than simply state that a declarant 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 collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Although counsel asserts that no attempts have been made to contact the affiants and to verify the content of testimony contained in the affidavits, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence. The applicant himself has impaired the credibility of such claims by the inconsistencies in his own statements. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant may have resided in this country as an undocumented alien, such difficulty does not explain the contradictions and conflicts between the applicant's own testimony and the testimony contained in his supporting documents. The deficiencies of an affidavit are not remedied simply by providing a phone number where the affiant may be contacted. The regulation requires that "[a]ll documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied." 8 C.F.R. § 245a.2(d). **USCIS policy does not require the director to establish the credibility of documents which are internally inconsistent.**

It is noted that the record of proceeding shows that the applicant's wife resided in Pakistan and that his children were born in Pakistan during the requisite period. The record also shows that the applicant stated under oath during his interview on May 27, 1998 that he was able to father his children when he met with his wife in Canada. The applicant did not indicate on his current Form I-687 application at part #32 any absences from the United States. During the applicant's interview on January 10, 2006 he stated under oath that his children were born in 1983, 1986, and 1987. The applicant also stated that he was absent from the United States once in May of 1987 when he traveled to Canada to visit relatives and friends. It is also noted that the applicant submitted a copy of the Canadian Record of Landing dated May 16, 1997 in which he stated that his son [REDACTED] was born February 8, 1983, his son [REDACTED] was born August 10, 1986, and his daughter [REDACTED] was born December 16, 1987. In contrast, it is noted that on the applicant's previously submitted Form I-687 application at part #32 he stated that his son [REDACTED] was born February 1979, his son [REDACTED] was born August 1980, and his daughter [REDACTED] and son [REDACTED] were born December 1981. At part #35 of the applicant's

previously submitted Form I-687 application he stated that he was absent from the United States from June 15, 1987 to June 25, 1987, when he traveled to Canada.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The record of proceeding contains many inconsistencies and contradictions that call into question the credibility of the applicant's statements and evidence. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 applicant's reliance on evidence with little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.