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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

MSC-06 098 27686

Office: NEW YORK CITY

Date:

JUN 22 2009

IN RE: Applicant:

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: SELF-REPRESENTED

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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Pakistan who claims to have lived in the United States since May 1981, 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 January 6, 2006. The director denied the application, finding 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.

On appeal the applicant reasserts his claim that he has been residing in the United States since 1981 and submits additional documentation to establish his continuous residence in the United States during 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) 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.* 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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 the following:

A letter of employment by [REDACTED], office manager at Master Sign, dated December 28, 2005, stating that the applicant was employed from May 1981 to November 1989 as a helper and was paid \$175.00 per week in cash.

A photocopied two-year apartment lease between the applicant and [REDACTED] (Tenants) and [REDACTED], Landlord for [REDACTED], Brooklyn, New York, beginning August 1981 through July 1983.

- An airmail envelope addressed to the applicant at [REDACTED] Brooklyn, New York, from an individual in Sialkot, Pakistan, with an illegible postmark that appears to have been altered by hand.
A photograph of the applicant and some other individuals with no date stamp or other official markings to establish when and where it was taken.
Three notarized letters dated in 2005 and 2007, from two individuals who claim to have known the applicant resided in the United States since 1981.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The letter of employment by [REDACTED] office manager at Master Sign, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period for legalization.

The photocopied apartment lease does not appear to be genuine. The original lease is not in the record for verification. The lease was supposedly for a two-year term beginning August 1981 through July 1981, however, the agreement was prepared on a Form printed in December 1987. The lease did not include the date it was signed, did not include a notarial stamp or other official marking to verify the date it was written. Given the date the form was printed, the apartment lease is of questionable authenticity and credibility. The lease is not supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Brooklyn, New York, address during the years indicated. In view of these substantive deficiencies and the applicant's overall lack of credibility, the residential lease agreement has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period for legalization.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The envelope addressed to the applicant at [REDACTED] in Brooklyn, New York, has illegible postmarks which look like they may have been altered by hand. The envelope does not bear a United States Postal Service date stamp or other markings to show that it was received and processed in the United States before delivering to the applicant's address. Thus, the

envelope does not appear to be genuine. It has little probative value and is not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for legalization.

The photograph showing the applicant and some other people has little probative value as evidence of the applicant's residence in the United States during the requisite period. There is no notation on the photograph or date stamp as to when and where it was taken, and even if it was taken during the 1980s it would not establish that the applicant resided in the United States at the time the photograph was taken much less his continuous residence in the country for the requisite period.

The notarized letters and affidavits in the record from individuals who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats. Although some of the notarized letters and affidavits provided some basic information such as the address claimed by the applicant during the 1980s, however, considering the length of time they claim to have known the applicant – in most cases since 1981 – the authors provided very few details about the applicant's life in the United States, and the nature and extent of their interactions with him over the years. The letters and affidavits are not accompanied by any documentary evidence of the authors' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the notarized letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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.