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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**

**L1**

[REDACTED]

FILE:

[REDACTED]

Office: TAMPA

Date: **MAY 06 2009**

MSC-06 098 11111  
MSC 08 038 12106-APPEAL

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 District Director, Tampa, Florida. 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 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 counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for adjustment of status under the LIFE Act.

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:

- Affidavits – dated in 1990 and 2003 – from two individuals claiming to have resided with or otherwise known the applicant in the United States during the 1980s.
- Two photocopied receipts with handwritten notations of the applicant's name dated December 3, 1986 and June 10, 1987.

Two photocopied photographs of the applicant – one with notation by the applicant "[REDACTED] – 1986" and the other with notation by the applicant "Disneyland – LA 1981.

- Photocopies of postcards – one addressed to the applicant at [REDACTED] Los Angeles, California, with an illegible postmark date – the other two postcards do not bear any name, mailing address or postmark dates.
- A photocopy of a certificate of achievement from [REDACTED] addressed to the applicant, dated June 28, 1986.

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

The AAO notes that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988, other documentation in the record indicates otherwise. For example, on the Form I-687 (application for status as a temporary resident) the applicant filed on November 19, 1990, and the Form I-485 he filed on November 16, 2001, the applicant indicated that he had two children during the 1980s – a daughter, [REDACTED] born on December 31, 1983, in India, and another daughter, [REDACTED] born on October 24, 1986, in India. The applicant indicated however, on the Form I-485 that [REDACTED] was born in the United Arab Emirates. The applicant indicated on the Form I-687 that he was absent from the United States once during the period the requisite period. The indicated absence was from March 25, to April 20, 1983. The other absences indicated by the applicant were from December 20, 1989 to January 21, 1990, and from September 1, 1990, to September 23, 1990, which are outside the requisite period and shall not be evaluated in this proceeding. There is no evidence in the record that the applicant's wife was residing in the United States during the 1980s. On the contrary, there are documentation in the record indicating that the applicant's wife resided and worked in Dubai, UAE during the 1980s. Therefore it is implausible that the applicant's wife could have conceived and given birth to two of the applicant's children outside the United States during the same period that the applicant claimed he was physically present and residing in the United States.

The record reflects that the file contains copies of the birth certificates of the applicant's children, which further cast doubt on the applicant's claim that he resided in the United States from before January 1, 1982 through May 4, 1988. The birth certificate for [REDACTED] indicated her date of birth as December 31, 1983, and the permanent address of the father and mother as [REDACTED] India. The birth certificate for [REDACTED] indicated date of birth as October 24, 1986, place of birth as Sharjah, UAE. Her birth was registered at the Indian Consulate General Office in Dubai, UAE on November 13, 1986. The rank/profession/occupation of the applicant and his claim to Indian citizenship are indicated as: Service, Passport No. [REDACTED] Dubai, July 11, 1985. The birth certificate of the applicant's son [REDACTED] indicated date of birth as February 1, 1991, in Sharjah, UAE. The birth was registered at the Indian Consulate General Office in Dubai, UAE on February 7, 1991. The rank/profession/occupation of the applicant and his claim to Indian citizenship are indicated as: Service, Passport No. [REDACTED] issued in Bombay, on January 27, 1983. The information on the birth certificates shows that the applicant had been issued two other passports – on January 27, 1983, in India and on July 11, 1985, in Dubai, UAE. Since the applicant did not indicate any absence from the United States in January 1983 and in 1985, the information on the birth

certificates strongly suggest that the applicant was not residing in the United States from at least 1983 through 1986.

The contradictory information provided by the applicant regarding his initial date of entry into the United States and his continuous residence in the country cast considerable doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director in her NOID notified the applicant of the contradictory information and documentation in the record and offered him an opportunity to reconcile or rebut the contradictions, but he failed to do so. 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. *See 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.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, photocopies of photographs, photocopied receipts and photocopied postcards – is suspect and not credible. For example, affiant [REDACTED] submitted two affidavits. On one of the affidavits, he claims to have known the applicant since 1981, while on the other affidavit, he claims to have known the applicant since 1988. [REDACTED] provided very little information about the applicant. He did not provide any information about the nature and extent of his relationship with the applicant. Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the period for legalization under the LIFE Act.

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.