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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
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Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 05 2009
MSC 04 268 10549

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:

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, 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.

On appeal, the applicant states:

> The decision on my legalization applications were based on surmise and conjecture without evaluating the informations and documents adduced in support of my claim for legalization. The grounds which are taken by the Service for denial of my applications are "the information and documentation you submitted are insufficient to overcome the grounds for denial for the reasons herein described." In my reply to the Notice of Intent to Deny, stated in details about the mode of my first entry into the United States. At the time of my interview I also told the respective officer that I first entered the United States by jumping ship. The name of the ship was Pike Bank. To the interviewing office and in my reply I clarified the actual ages of my children. The Service should have accepted by reply evaluating the informations and evidences those I submitted with my original applications in support of my claim for legalization. All the documents those I submitted are true and genuine and sufficient as to approve my legalization application. Though I could meet the criteria for legalization, yet the Service denied my applications without exercising judicious mind which made me aggrieved and dissatisfied and pray to admit my appeal.

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 "CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants," documents from [redacted] and [redacted] who state they know the applicant has resided in the United States since 1981.

2. Notarized statements from [redacted] and [redacted] who state they know the applicant has resided in the United States since 1981.

3. An Affidavit of Residence from [redacted] who states the applicant lived with him at "[redacted] from August 1981 to September

4. A notarized statement from who states the applicant lived with him as a tenant at " from October 1986 to March 31, 1990.

5. An employment verification letter dated May 29, 2004 from of General Construction Corp. in Brooklyn, New York, who states the applicant worked for the firm since 1981.

6. An employment verification letter from dated September 7, 1988 who states the applicant, while living at in Pompano Beach, Florida, worked under his supervision from November 1986 to April 1988.

7. An Employment Declaration for Special Agricultural Workers from dated October 11, 1988 who states the applicant worked for his company as an agricultural worker from November 1, 1986 to April 1988.

and (Items # 1 and # 2 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiant's personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements 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 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988.

On his form G-325A the applicant stated that he resided in Bangladesh from January 1957 to October 1986. However, (Item # 3) stated the applicant resided in Brooklyn, New York from August 1981 to September 1985. On his Form I-687, the applicant stated he resided at in Brooklyn, New York, beginning in April 1986. However, stated the applicant began residing at that address in October 1986.

The employment verification letter from (Item # 5) 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). (Items # 6 and # 7) claims that the applicant resided in from November 1986 to April 1988 while an agricultural worker for his firm. However, on his Form I-687, the applicant stated that he was residing in Brooklyn, New York, from November 1986 to April 1988. Additionally, on his Form I-687, he did not state that he worked for

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 applicant's asserted employment and residential histories on his Form I-687 are accompanied by inconsistent evidence.

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.