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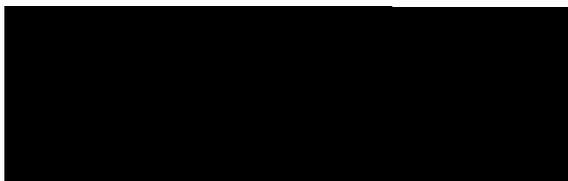
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**



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FILE:



Office: NEW YORK CITY

Date:

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consolidated herein]
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MSC-06 097 11360

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:



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 February 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 5, 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 counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for 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 AAO determines that the applicant has not met his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. On a Form I-687 dated September 23, 1991, which the applicant filed on November 12, 1991, the applicant indicated that he last entered the United States on July 28, 1990 through New York City with a B-2 visa. The applicant indicated that he traveled outside the United States once during the 1980s – a trip to visit his family in Pakistan – within the month of April 1983. The applicant indicated that he was self-employed as an auto workshop helper in Orlando, Florida from February 1981 through the date of filing the application. The applicant

indicated his residential address in the United States as [REDACTED] Florida, from February 1981 through the date of filing the application. The applicant did not indicate that he has any children on the form.

On the Form I-687 dated December 9, 1990, which he filed in January 1993, the applicant indicated that he last entered the United States illegally on August 13, 1987 through the United States-Canada Border. The applicant indicated that he made only one trip outside the United States during the 1980s – a trip to Canada to meet family on visit from Pakistan – lasting from July to August 1987. The applicant indicated that he has three children, two daughters and a son - all were born in Pakistan. The applicant indicated that his son [REDACTED] and his daughter [REDACTED] were born on May 15, 1987, while his other daughter [REDACTED] was born on July 1, 1981. The applicant indicated the following as his residential addresses and employment in the United States during the requisite period:

Addresses:

- [REDACTED], from December 1981 to October 1985;
- [REDACTED] from November 1985 to September 1988; and
- [REDACTED], from October 1988.

Employment:

- Shazi Fabrics Busy Bee Mall, Flushing, New York, accountant, from December 1981 to June 1984;
- Golden Waterproofing Company, Corona, New York, supervisor, from July 1984 to January 1986;
Sajjad Caterers, Brooklyn, New York, salesman, from February 1986 to February 1988; and
- Upper Madison Drugs, New York City, desk clerk, from March 1988 to December 1989.

On the Form I-687 he filed on January 5, 2006, the applicant indicated that he last entered the United States on December 5, 2002, with a visitor's visa. The applicant indicated that he made only one trip outside the United States during the 1980s – a visit to Pakistan to visit his family – within the month of April 1983. The applicant indicated the following as his residential addresses in the United States during the requisite period:

Addresses:

- [REDACTED] from December 1981 to November 1985;

- [REDACTED] from November 1985 to October 1988;
- and
- [REDACTED] from October 1988 to September 1991.

The applicant indicated that he was self-employed doing different odd jobs from 1981 to September 1991. On the two Forms I-485 (application to register permanent resident or adjust status) he filed on June 3, 2002, and February 3, 2003, the applicant indicated that he last entered the United States on May 20, 2002, and December 5, 2005, respectively with a visitor's visa. The applicant indicated that he has three children, all were born in Pakistan. His son, [REDACTED] was born on May 15, 1985, his daughter [REDACTED] was born on November 8, 1989, and his other daughter [REDACTED] was born on July 1, 1981.

Based on the various documents discussed above, it is abundantly clear that the applicant has provided conflicting statements about his entry and continuous residence in the United States, which calls into serious question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through the requisite period. In the Notice of Intent to Deny (NOID) dated July 5, 2007, the director notified the applicant of the discrepancies in his testimony regarding his continuous residence in the United States. Specifically, the director notified the applicant that the birth of his son and daughter on May 15, 1985, as he indicated on the Form I-687 he filed in 1993, strongly suggests that the applicant was in Pakistan at the time his children were conceived and or born and not in the United States as he had claimed. In his response to the NOID, the applicant indicated that he made a mistake in the dates of birth of the children. The applicant then stated that his son was born in 1985 and his daughter was born in 1987. In support of his statement, the applicant submitted photocopies of birth certificates from Islamabad Private Hospital showing that the applicant's wife gave birth to a son on May 15, 1985 and a daughter on November 11, 1987.

The birth certificates do not appear to be genuine because no name of a child was written on the birth certificates. Furthermore, the birth certificate of the daughter indicated that the child was born on November 8, 1987, however, the applicant indicated on two of the Forms I-485 that her daughter was born on November 8, 1989. Thus, the birth certificate is contrary to the applicant's statement on the Forms I-485, thereby casting doubt on the veracity of the applicant's claim of continuous residence in the United States during the requisite period as well as the credibility of the birth certificates.

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 discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – letters of employment from his alleged former employers, receipts and photocopied residential lease agreements – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

For example, the applicant submitted photocopies of residential lease agreements between the applicant and Sherwin Management in New York for the rental of [REDACTED] in Brooklyn, New York, for four years; between Safia Sultan for the rental of [REDACTED] in Dumont, New Jersey, for three years; and between [REDACTED] for the rental of [REDACTED] in Union City, New Jersey, for three years. None of the lease agreements bear any date stamp or other official marking to authenticate the dates on the lease. The leases are not accompanied by utility or other bills addressed to the applicant at any the addresses he claimed to have lived during the years. Furthermore, the lease agreements are contrary to the residential information provided by the applicant on the Form I-687 he filed in 1991. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, the residential lease agreements have little probative value. They are not persuasive evidence that the applicant resided continuously in the country for the duration of the requisite period

As for the letters of employment from four businesses who claim to have employed the applicant in different capacities from December 1981 to December 1989, they do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records; and did not indicate the location of such records and whether they were available for review. Nor are the letters accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed during any of the years in question. Additionally, the employment letters are contrary to the employment information provided by the applicant on the Forms I-687 he filed in November 1991 and January 2006. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, the employment letters have little probative value. They are not persuasive evidence that the applicant resided continuously in the country for the duration of the requisite period.

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.