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FILE: [Redacted] Office: BALTIMORE
[Redacted] - consolidated herein]
MSC-05 207 11158

Date: **SEP 04 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 in Baltimore, Maryland. 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 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 April 25, 2005. 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 documentation submitted by the applicant in support of his application. In counsel's view, the evidence in the record is sufficient to establish that that the meets the continuous residence requirement 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 file contains information and documentation that call into question the veracity of the applicant's claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period. At his interview on January 31, 2006, the applicant executed a Sworn Statement in which he stated that he entered the United States without inspection through Mexico in February 1981. The applicant stated that he made three trips outside the United States to Pakistan during the 1980s. The first trip was from March to April 1983 to get married, the second trip was from February to March 1984 to see his wife and family, and the third trip was from August to September 1987 to see his family.

The applicant stated that he resided in Brooklyn, New York, from 1981 to 1990 and in Baltimore, Maryland, from 1990 to the present (2006). As for employment, the applicant stated that he worked in temporary labor in New York City, from 1981 to 1987 and at Shaheen Construction Company in New York City, in 1987. On the Form I-687 he filed in 2005, the applicant indicated that he made only one trip outside the United States to Pakistan to see his wife and family in 1987 (specific dates of the trip not indicated). The applicant indicated the following as his residential and employment information in the United States during the requisite period:

Addresses:

- [REDACTED], from 1981 to 1987;
- [REDACTED], from 1981 to 1987; and
- [REDACTED] from 1987 to 1989; and
- [REDACTED], from 1989 to 1990.

Employment:

- Shaheen Construction, Queens, New York, labor, from 1981 to 1984;
- Lawery Bakery, New York City, baker, from 1984 to 1987; and
Jeffry Sub, New York City, cook, from 1987 to 1988.

On the Form I-687 he filed in 1990, the applicant indicated that he entered the United States without inspection in August 1981, and resided continuously in the country through the requisite period except for one trip to Pakistan to visit his family in the month of August 1987. The applicant indicated the following as his residential and employment information during the requisite period:

Addresses:

- [REDACTED], from September 1981 to July 1987; and
- [REDACTED] from October 1987 to the present (1990).

Employment:

- Shaheen Construction Company, labor, from October 1981 to December 1983;
Lawaray Bakery, Queen, New York, baking, from January 1984 to July 1987; and
Jeffery Submarine, cook, from September 1987 to the present (1990).

The record reflects that the applicant has submitted conflicting information and statements about his initial entry into the United States and his continuous residence in the country during the requisite period. The contradictions in the record cast grave doubt on the veracity of the

applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

As discussed above, the applicant has submitted conflicting information and statements in support of his application. The applicant has not provided any objective evidence to justify and reconcile the contradictions. Therefore, the documentation in the record consisting of – a series of affidavits dating from 1990, 2004 and 2005, from individuals who claim to have resided with, or otherwise known the applicant in the United States during the 1980s – 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.

The affidavits in the record have minimalist or fill-in-the-blank formats with little input by the affiants who provided few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. Some of the affiants claim to have known the applicant from 1986 and 1987 respectively, yet they claim to have known the applicant had been residing in the United States from 1981. These affiants do not have personal knowledge of the applicant's initial entry into the United States and did not indicate the source of their information that the applicant has been residing in the United States since 1981. Mr. [REDACTED] Claim to have resided with the applicant at [REDACTED] Brooklyn, New York, from 1981 to 1990, the applicant however, indicated on the Form I-687 he filed in 2005 that he lived at the Cortelyou address from 1981 to 1987. [REDACTED] claims that he knew the applicant since 1983 and that "we sued to live together in New York at [REDACTED], Brooklyn, New York." [REDACTED] did not indicate the period of time he lived with the applicant, and the applicant did not claim the [REDACTED] address as any of his addresses in the United States during the 1980s. The affidavits are not accompanied by any documentary evidence demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that the 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 through 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.