

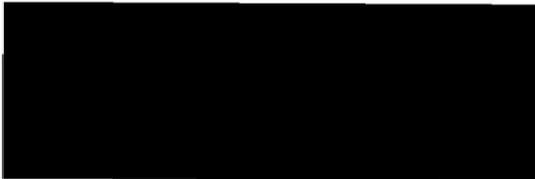
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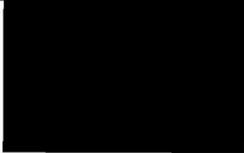


U.S. Citizenship
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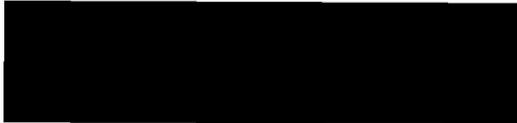
Office: NEWARK
- consolidated herein]

Date: **SEP 04 2009**

MSC 05 216 11736

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, or *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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be dismissed.

The applicant a native of Pakistan, who claims to have lived in the United States since March 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 May 4, 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, the applicant asserts that the director did not properly evaluate the documents submitted in support of his application. In the applicant's view, the evidence in the record is sufficient to establish that he meets the continuous residence requirement in the United States for the duration of 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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 submitted contradictory statements and documents in support of his application. On a Form I-687 and accompanying documents the applicant filed in 1990, the applicant stated that he entered the United States through Mexico on March 20, 1981 and resided continuously in the country through the requisite period except for one brief trip to Pakistan from October 15 to November 15, 1987. The applicant did not indicate any other trips

outside the United States during the 1980s. On the Form I-687 he filed in 2005, the applicant indicated that he entered the United States on March 20, 1981, that he made three trips outside the United States during the 1980s. The first trip was to Pakistan from April to July 1985 to see his parents. The second trip was to Pakistan in December 1987 to see his parents. The third trip was to Pakistan from July 2 to August 6, 1988, to see his family. On a Form G-325A (Biographic Information) dated June 26, 1997, which the applicant filed with a Form I-485 (application to register permanent residence or adjust status) on November 20, 1997, the stated that his last address outside the United States of more than one year was [REDACTED] Pakistan, from June 1953 (month and year of birth) to July 1994. Records available to the United States Citizenship and Immigration Services (USCIS) show that the applicant stated that he first entered the United States on July 9, 1985. This is consistent with the declaration by the applicant dated April 21, 2005, stating "I traveled without INS permission to Pakistan in 1st week of April 1985 and reentered in the United States on July 9, 1985 with visit visa," which was issued to him at the U.S. Embassy in Lahore, Pakistan. A copy of the visa submitted by the applicant in the record shows that the applicant was issued a multiple entry visa at the U.S. Embassy in Lahore, Pakistan on May 9, 1985, which the applicant used to enter the United States on July 9, 1985.

The contradictory statements and documents submitted by the applicant regarding his entry into the United States and his continuous residence in the country 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.*

In the absence of any credible evidence to show that the applicant entered the United States before January 1, 1982, and the conflicting information provide by the applicant of his entry into the United States and his continuous residence in the country, it appears that the entry on July 9, 1985, is most likely the first time the applicant entered the United States. Therefore, the AAO will accept documentation submitted – copy of Form 1040 U.S. Individual Income Tax for the year 1986, a copy of a state issued identity card with an issue date of 1986, and other official documents issued from 1986 onwards as credible evidence of his continuous residence in the United States from July 1985 through the date of filing the application, and will focus it's review on documentation submitted by the applicant prior to July 1985 to determine whether it is sufficient to establish the applicant's continuous residence in the United States for the requisite period.

As discussed above, the applicant has submitted conflicting statements and documents 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 – envelopes, merchandise receipts, letters and affidavits from individuals who claim to have

employed, rented an apartment to, resided with or otherwise known the applicant 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 during the requisite period.

The applicant has submitted two envelopes addressed to him at [REDACTED] Kew Gardens, New York, as evidence of his residence in the United States during the requisite period. One of the envelopes bears a foreign postmark date of June 16, 1982 and the other envelope has an illegible postmark date. None of the envelopes bear a United States Postal Service mark to show that the envelopes were received and processed in the United States before delivery to the applicant. Thus, the envelopes have little probative value and are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The record includes a letter of employment from [REDACTED], manager at Shea Truck & Auto Repairs in Flushing, New York, dated July 15, 1990, stating that the applicant was employed from June 4, 1981 to March 1985, as a handyman and was paid \$180.00 per week. The letter of employment does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it 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. Thus, 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.

The record also includes a handwritten merchandise receipt for merchandise allegedly purchased by the applicant on July 23, 1982. The receipt has handwritten notation of the applicant's name with no address and no stamp or other official markings to authenticate the dates it was written. Given these substantive deficiencies, and the general lack of credibility the applicant has shown with other documentary submissions, the AAO concludes the receipt has little probative value and is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

As for the affidavits in the record from individuals who claim to have rented an apartment to, resided with the applicant or otherwise known the applicant during the 1980s, they minimalist or fill-in-the-blank formats with little input by the authors. 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 the extent of their interactions with the applicant during the 1980s. Nor are the letters and affidavits supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. Most of the letters and affidavits are not accompanied by evidence of the authors' identities and residence in the United States during the 1980s. For the reasons discussed above, the AAO finds that the letters and affidavits have limited 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 filed the application.

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.

Although the applicant has provided sufficient credible evidence to show that he resided in the United States from July 1985 onwards, he has failed to provide sufficient credible evidence to establish by preponderance of the evidence his continuous residence from before January 1, 1982 through August 1983. 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.