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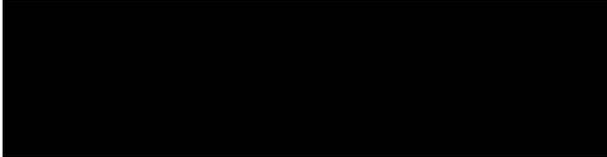
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: HOUSTON

Date:

FEB 02 2010

MSC 06 053 22559

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.

Perry Rhew
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, Houston. 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, 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, counsel states the applicant arrived in the United States prior to 1982 and, with the exception of two short absences lasting less than forty-five days each, has remained in the United States continuously since this time. Counsel further states that on July 9, 1992, the applicant appeared to renew his employment authorization card at the United States Citizenship and Immigration Services (USCIS) Dallas District Office and instead of renewing his card, an immigration officer asked the respondent to make a statement regarding his entries and exits to and from the United States. Counsel argues that the director's denial should be dismissed because the respondent did not receive advance notice of this impromptu hearing where he was unable to give the exact dates and times that he left and returned to the United States, and the applicant was not allowed to have legal representation at the impromptu interview. Counsel indicates that the only item of a negative nature discussed by the director was the fact that the applicant had discrepancies regarding his testimony and statements on his application. Counsel submits no evidence to support his assertion that the applicant was not allowed to have legal representation at his July 9, 1992 interview with an immigration officer or that his client requested previous counsel be present. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

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 statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1980.
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since the early 1980's.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1982.
4. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1987.

5. An employment letter from [REDACTED] in Hawthorne, California, who states the applicant was employed at the firm from 1982 to 1986.
6. An employment letter from a person with an indiscernible signature, [REDACTED] in Cathedral City, California, who states the applicant was employed by the firm in December 1985 for two weeks.

The persons providing the statements (Items # 1 through # 4 above) claim to have known the applicant for a substantial length of time, some since he was born. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the writers' personal relationships and contacts with the applicant while he was 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. Additionally, the employment verification letters do 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). On his Form I-687, the applicant was asked to list his employment in the United States since entry. He did not list [REDACTED] in Hawthorne, California, or [REDACTED] in Cathedral City, California. Additionally, in his notarized letter dated April 24, 1990, he stated that he was self-employed from October 2, 1981 to April 24, 1990.

On his Form I-687, the applicant was asked to list all of his residences in the United States since his first entry. He stated that he first began residing in the United States in October 1981. However, [REDACTED] and [REDACTED] (Item # 1) state they know he has resided in the United States since 1980. Additionally, on his Form I-687, the applicant was requested to list all absences from the United States since entry. He listed one trip to Pakistan "to avoid deportation" from August 1987 to October 1988. However, on a Form I-648, Memorandum Record of Interview made in Examinations Section, he signed on July 9, 1992, he stated he stayed in the United States for five or six years until he returned to Pakistan in August 1987 and that he remained in Pakistan for a "year and a half." His statement on his Form I-687 also differed from the testimony that he provided at his immigration hearing in removal proceedings before an Immigration Judge (IJ) held in San Antonio, California, on October 1, 1998. He told the Judge that in August 1987 he went back to Pakistan and stayed there a month and a half before returning to the United States in October 1987.

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 residence, employment and absence 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.

On October 4, 1999, the applicant was granted the opportunity to voluntarily leave the United States by December 3, 1999 by an IJ in San Antonio, Texas. The IJ's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and he was ordered deported from the United States to Pakistan. The applicant appealed the IJ's order to the Board of Immigration Appeals (BIA). On October 30, 2002, the BIA affirmed the IJ's decision, and granted him voluntary departure within thirty days from the October 30, 2002 decision date and further provided that should he fail to depart, he should be removed as provided in the IJ's order. The record does not show that the applicant departed this country as ordered.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility