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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [Redacted] MSC 06 098 13442

Office: HOUSTON

Date: FEB 02 2010

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish her eligibility for Temporary Resident Status. Counsel does not submit additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. See 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. See 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. See 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. See 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).

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).

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 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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant is a native of Pakistan who claims to have resided in the United States since February 1981. She filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 6, 2006.

In the Notice of Decision, the director denied the instant application after determining that the evidence provided was insufficient to establish the applicant’s unlawful continuous residence in the United States during the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record (including the record for the applicant’s spouse, [REDACTED], which is hereby incorporated by reference), the AAO determines that she has not.

The evidence provided which pertains to the requisite period consists of:

Letters of Employment

- 1) The applicant submitted letters of employment from [REDACTED] located at [REDACTED], stating that the applicant had been employed as Office Manager from February 2, 1982 to June 30, 1986.
- 2) Two letters of employment from [REDACTED] stating that the applicant worked at his store; and at his New Taj Mahal Restaurant from July 1987 to 1990. Regarding the employment of the applicant, the affiant does not indicate the capacity in which the applicant had been employed, nor does he specify the location of the store where the applicant worked.

It is noted that the letters failed to provide the applicant's address at the time of employment. Also, the letters failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits

- 1) Affidavit from [REDACTED] dated May 16, 2005, and March 20, 2007. In his first affidavit, [REDACTED] attests that the applicant has resided in the United States since 1981, and that he had accompanied the applicant when the applicant went to apply for Amnesty in 1988 and was turned down. In his second affidavit [REDACTED] attests that the applicant has resided in the United States since 1981. [REDACTED] also attests that the applicant worked at his store, [REDACTED] from March 1981 until 1982; and at his New Taj Mahal Restaurant from July 1987 to 1990. However, [REDACTED] does not provide essential details, such as to indicate how he dates his acquaintance with the applicant, and whether and under what circumstances he maintained contact with the applicant. It is noted that the two affidavits from [REDACTED] are radically different as in his second affidavit he describes having employed the applicant on two separate occasions, but in his first affidavit he does not indicate ever having employed the applicant.
- 2) Affidavits from [REDACTED] and [REDACTED] Mr. [REDACTED] attests to having known the applicant to have resided in the United States since 1984. However, he does not indicate when in 1984 he first became acquainted with the applicant. [REDACTED] and [REDACTED] attest to having known the applicant to have resided in the United States since 1981. [REDACTED] attests to having known the applicant to have resided in the United States "since 1981 / 1982."
- 3) An affidavit from [REDACTED], attesting that she has known the applicant since 1982. [REDACTED], however, does not provide details, as to indicate when in 1982 she first met the applicant, how they became acquainted, and whether and how, if at all, she maintained contact with the applicant.

Contrary to counsel's assertion, the evidence provided lacks essential details, and the applicant has provided questionable applications. The applicant has provided several affidavits attesting to her

residence in the United States during the requisite period; however, the affiants do not indicate how they date their acquaintance with the applicant; whether, how frequently, and under what circumstances they had contact with the applicant since their acquaintance. It is reasonable to expect that the affiants would provide such details given that they attest to having been acquainted with the applicant for periods of over 20 years.

In addition, the applicant has provided apartment leases for the period from July 1983. However, the period prior to July 1983 is not included in these leases, and he does not provide additional evidence to establish his residence since prior to January 1, 1982.

It is noted that the applicant's spouse indicated on his Biographic Information, Form G-325A, that he married the applicant, [REDACTED], on September 8, 1980; and, that in 1975 he had a prior marriage, to [REDACTED] (no first name provided), which was terminated in Karachi, Pakistan, in 1987. Evidently, the applicant spouse was still married to [REDACTED] when he married the applicant, and this evidence points to the existence of a polygamous relationship. It is also noted that evidence of the termination of the marriage [REDACTED] has not been provided.

Also, although the applicant claims that she has resided in the United States unlawfully since 1981, the record reflects that since June 1991, the applicant has departed the United States on eleven (11) occasions and returned using a B-2 nonimmigrant visa. It is unlikely, however, that the applicant would have been issued a visitor's visa unless she was able to establish that she resided and worked in Pakistan. It is also noted that the applicant failed to disclose that she had made these trips when she was asked during her interview on July 25, 2003. It is questionable, therefore, whether the applicant has resided in unlawful status since 1981 as she claims.

These discrepancies and considerable lack of detail in the evidence provided casts considerable doubt on whether the evidence provided by the applicant, including affidavits and letters attesting to her continuous residence since 1981, in support of her application is genuine, and whether she has resided in the United States since 1981, as she claims. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in her testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, 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 amenability to verification.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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