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Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
MSC-06-097-12885

Office: NEW YORK

Date: **JAN 25 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

Elizabeth McCormack

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 of the New York office and 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 (Act) and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application, on the basis of reasons set forth in a Notice of Intent to Deny (NOID) the application, finding that the applicant was ineligible for adjustment to temporary resident status because the applicant had previously filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker. In addition, the director found 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 time period.

On November 3, 2009, the AAO sent the applicant a follow-up communication informing the applicant that the portion of the director's decision finding the applicant to be ineligible for temporary resident on the basis of a previously filed I-700 application was withdrawn. In addition, the AAO informed the applicant that additional documentation was required in order to complete the adjudication of his appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide additional evidence that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status for the entire requisite period. Further, the AAO cited several inconsistencies in the record of proceedings.

In rebuttal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence in the form of a copy of a 1987 New York State driver's license and a witness statement from [REDACTED].¹ The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

¹ The record reflects that the applicant's FOIA request, EAC920844, was processed on July 14, 1992. The record reflects that the applicant's FOIA request, ESC97000577, was processed on March 11, 1997.

² The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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) 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] and [REDACTED]. The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would

lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, witness [REDACTED] states that the applicant resided with him at [REDACTED] in Brooklyn from January 3, 1986 until at least the date of the witness's statement on November 4, 1987. The statement of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant states that he also resided at that address from September 1983 until April 4, 1985 and from December 1985 for the duration of the requisite period. Due to these inconsistencies, the witness statement has minimal probative value.

The applicant has submitted copies of employment verification letters from [REDACTED] and [REDACTED]

The employment verification letter of [REDACTED] states that the applicant worked for him as a home assistant from November 1981 through February 1982. The testimony of the witnesses is inconsistent with the testimony of the applicant in the instant I-687 application in which the applicant does not list any employment with the witness at any time during the requisite statutory period. In the instant I-687 application, the applicant lists self-employment as a taxi driver from August 1981 for the duration of the requisite statutory period. Due to these inconsistencies, the employment verification letter has minimal probative value.

The applicant has submitted two employment verification letters from [REDACTED] listed as a person with knowledge of the applicant's employment at [REDACTED] co-op in Phoenix, Arizona. The witness states that the applicant was employed by the company as a seasonal agricultural worker from April 9, 1985 to December 25, 1985. However, the testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant does not list any employment as a seasonal agricultural worker with [REDACTED] at any time during the requisite statutory period. In the instant I-687 application the applicant only lists a residence address with [REDACTED]. Due to these inconsistencies, the employment verification letter has minimal probative value.

The record contains an employment verification letter from [REDACTED] of [REDACTED] in Brooklyn, who states that the applicant was employed as a construction worker from January 7, 1986 to April 30, 1987. However, the testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant does not list any employment as a construction worker with [REDACTED] at any time during the requisite statutory period. Due to this inconsistency, the employment verification letter has minimal probative value.

The applicant has submitted an employment verification letter from [REDACTED] of [REDACTED] who states that the applicant was employed as a construction worker from May 4, 1987 until at least the date of the letter on November 2, 1987. However, the

testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant does not list any employment as a construction worker with Panorama International at any time during the requisite statutory period. Due to this inconsistency, the employment verification letter has minimal probative value.

The record contains an employment verification letter from [REDACTED] of [REDACTED] in Brooklyn, who states that the applicant was associated with the company as an independent contractor, self-employed franchise owner, working as a limousine driver from 1987 for the duration of the requisite statutory period. However, the testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant does not list any employment as a limousine driver at any time during the requisite statutory period.³ Due to this inconsistency, the employment verification letter has minimal probative value.

Further, the employment verification letters do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties, or the location at which she was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these reasons, the employment verification letters are of little probative value.

The applicant has submitted a letter dated April 2, 1986 from [REDACTED] in New York, confirming a deposit made by the applicant. The record also contains a copy of the applicant's Pakistani passport, issued in New York on June 4, 1986. The applicant has also submitted a letter dated June 30, 1986 from [REDACTED] in New York, confirming a deposit made by the applicant. In addition, the record contains a copy of the applicant's New York identification card dated August 22, 1986. In addition, the applicant has submitted a copy of a letter sent to him which contains a metered postmark date of December 15, 1986. These documents are some evidence in support of the applicant's presence in the United States on April 2, 1986, June 4, 1986, June 30, 1986, August 22, 1986 and December 15, 1986.

³ In the instant I-687 application, the applicant states that he worked as a limousine driver, as an employee of [REDACTED], beginning in December 1988.

The record contains copies of the applicant's New York driver's license and interim license/identification card, both dated April 23, 1987. The applicant has submitted copies of receipts from [REDACTED] dated June 20, 1987 and from [REDACTED] dated September 1987. The record contains a copy of the applicant's Pakistani passport, issued in New York on September 30, 1987. These documents are some evidence in support of the applicant's presence in the United States on April 23, 1987, June 20, 1987 and on September 30, 1987.

The applicant has submitted a receipt from [REDACTED] for the residence [REDACTED]. However, the applicant has not listed this apartment number as a residence address in the instant I-687 application. Due to this inconsistency, the document has minimal probative value.

The record contains a deposit account balance summary and a letter from JP Morgan Chase Bank, regarding a checking account opened by the applicant on March 24, 1988. These documents are some evidence in support of the applicant's presence in the United States on March 24, 1988.

The applicant has submitted a statement of earnings from the Social Security Administration for the years 1987 and 1988. This document is some evidence in support of the applicant's presence in the United States in 1987 and 1988.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application, and a Form I-700, application for temporary resident status as a special agricultural worker.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding his absences from the United States during the requisite statutory period.

The record reveals that at the time of his interview on the instant I-687 application, the applicant stated that he first entered the United States on August 7, 1981 and had one absence from the United States during the requisite statutory period, from February 6, 1985 to February 22, 1985. However, in the I-687 application the applicant lists one absence from the United States during the requisite statutory period, from February 8, 1988 to March 5, 1988. On appeal, the applicant states that he has two absences from the United States during the requisite period, from February 7, 1985 to February 22, 1985 and from February 8, 1988 to March 5, 1988.

The AAO finds that the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the applicant's absences from the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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.