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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

[REDACTED]

L1

DATE: APR 30 2012

OFFICE: PHILADELPHIA

FILE: [REDACTED]

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.

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, Philadelphia. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 1, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On September 22, 2007, the director of the Philadelphia office erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to provide documentation establishing his eligibility for temporary resident status.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 12, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal the decision to the Administrative Appeals Office (AAO).

On January 10, 2011, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On March 19, 2012, the AAO issued the applicant a Notice of Intent to Deny (NOID) and provided the applicant 21 days in which to respond or to provide additional evidence in support of his claim. In reply, counsel submits a letter stating that he has not been able to contact the applicant. As of the date of this decision, no additional evidence or brief has been received; therefore, the record will be considered complete. The director's decision will be withdrawn and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).<sup>2</sup>

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 245(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).

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<sup>1</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. See, *CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

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 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 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 established 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. The evidence submitted in support of the applicant's claim to have arrived in the United States before January 1982 and to have resided in an unlawful status during the requisite period consists of affidavits from three individuals claiming to know the applicant

during the requisite period, copies of two lease agreements and a copy of a medical letter. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed the document to determine the applicant's eligibility.

The affidavits from [REDACTED] are general in nature and state that they have known the applicant in the United States for all, or a portion, of the requisite period. The statements do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations, and demonstrate that the affiants have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For example, the affiants fail to state how they date their initial acquaintance with the applicant, the applicant's address(es) of residence or place of employment during the requisite period. Lacking specific details, the statements are not deemed credible and shall be afforded little weight as evidence in support of the applicant's claim.

The witness statement from [REDACTED] states that the applicant departed Pakistan for the United States in 1981. The declarant fails to state how he has personal knowledge of the applicant's continuous residence in the United States throughout the requisite period or any details of the applicant's residence in the United States during the requisite period. In addition, the declaration is not amenable to verification as the declarant resides in Pakistan. Given this, the declaration has no probative value and will not be given any weight as evidence in support of the applicant's claim.

The copies of lease agreements, dated December 1, 1981 and January 15, 1985, reflect that the applicant resided in the United States for portions of the requisite period. It is noted that the lease agreement, dated December 1, 1981, contains a discrepancy with the applicant's Form I-687 in the record. The lease agreement reflects that the applicant resided at [REDACTED]. However, in his Form I-687, signed by him on April 1, 1990, the applicant stated that he resided at the [REDACTED]. This discrepancy detracts from the credibility of the applicant's claim. Given this, the lease agreements will be given minimal weight as evidence in support of his claim. As requested in the NOID, the applicant failed to provide the original lease agreements and any corroborating letters from landlords or rent receipts.

The medical letter from [REDACTED], dated November 20, 1984, states that the applicant was examined in his office on the above date. The text on the letter appears to be in different fonts and shading. The dates on the letter appear to be in a different type font than the rest of the letter. The body of the letter is in a lighter shading than the valediction of the letter. There is a notable spelling error "Respira-tory" in the letter. Given the lack of detail and noted discrepancies, the letter will be given nominal weight as evidence in support of the applicant's claim.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although noted in the NOID, no explanation was provided to reconcile these inconsistencies.

The evidence, in totality, provides a general account of the applicant's claimed residence in the United States during the requisite period and fails to provide specific details which would reflect and corroborate a reliable knowledge of the circumstances of the applicant's residence for the length of time claimed by the witnesses. In addition, the noted inconsistencies and discrepancies cast serious doubt on the credibility of the applicant's claim. Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has not established that he is eligible for the benefit sought.

Based upon the foregoing, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.