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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

[REDACTED]

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Date: Office: NEW YORK, NY

JUL 06 2012

FILE: [REDACTED]

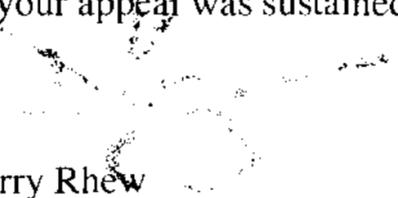
IN RE: Applicant: [REDACTED]

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: 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.


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 District Director (director), New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. *The appeal will be dismissed.*

The applicant, a native of India who claims to have lived in the United States since 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 (LULAC) Class Membership Worksheet on October 7, 2005. The director 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 appear for a scheduled interview on October 26, 2006.¹ Because the director erred in denying the application based on abandonment, on October 6, 2010, the director, National Benefits Center issued a notice advising the applicant of the right to appeal to the AAO. On April 24, 2012, the AAO withdrew the director's decision. The matter is now before the AAO on appeal.

On April 24, 2012, the AAO withdrew the decision of the director and considered the application on a *de novo* basis, 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).² Based on the evaluation, on April 24, 2012, the AAO issued a Notice of Intent to Deny (NOID), notifying the applicant of its intention to deny his application because of the applicant's failure to establish by a preponderance of the evidence that he has resided in the United States in an unlawful status for the duration of the requisite period. The applicant was granted twenty-one (21) days to submit rebuttal and additional evidence in support of his application. The applicant has submitted no rebuttal evidence in response to the AAO's NOID. The AAO will accept the record as complete and will adjudicate the application based on the evidence of record.

As stated in the NOID, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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

¹ 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.

² 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).

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).

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).

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to an "emergent reason". 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

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 evidence submitted by the applicant is sufficient to establish 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 AAO finds that the applicant has failed to meet this burden.

At the time of completing the I-687 application, the applicant indicated that he resided in the United States from September 1981, that he traveled outside the United States once during the requisite period – a trip to Canada in May 1986, that he was unemployed from September 1981 to September 1987 and that he was a self-employed home helper from October 1987 to June 1992. In support of his application, the applicant submitted a letter from [REDACTED]

The December 8, 2005 letter from [REDACTED], does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter, which was signed by [REDACTED] vaguely states that

the applicant has regularly come to their congregation "since long time," that the applicant participated in community activities and that the applicant served the congregation by taking part in the free community kitchen and jora ghar. [REDACTED] does not indicate whether the applicant was a member of the congregation and the period of his membership. [REDACTED] does not state where the applicant lived during the requisite period, does not indicate how and when he met the applicant, and does not state whether his information about the applicant's activities was based on his personal knowledge, the Society's records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little probative value and cannot serve as persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statements from [REDACTED] who appear to be husband and wife, state that they are friends of the applicant's father, that they have personal knowledge that the applicant came to the United States in 1981 and that the applicant used to live at [REDACTED]. Their statements are inconsistent with the information that the applicant provided on the Form I-687. On that form, the applicant indicated that he resided at [REDACTED] from September 1981 to January 1984; at [REDACTED] from February 1984 to September 1987; and at [REDACTED] from October 1987 to June 1992. The applicant did not list the [REDACTED] address as one of his addresses in the United States during the requisite period. This inconsistency calls into question the credibility of the witness statements as evidence of the applicant's continuous residence in the United States during the requisite period.

The AAO notes that while the witnesses claim to be friends of the applicant's father and have known the applicant since 1981, they provided very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. It is also noted that the applicant was only nine years old in 1981. The witnesses did not provide information about the applicant's travel to the United States, who he lived with and who cared for him during those early years. The witnesses did not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States from 1981. While [REDACTED] provided a copy of his Certificate of Naturalization as evidence of his identity and his United States citizenship as of August 12, 1994, and [REDACTED] provided a copy of her United States passport as proof of her identity and legal status in the United States as of July 10, 1995, the witnesses did not provide evidence that they were residing in the United States in 1981 to credibly testify to the applicant's residence in the United States from 1981. The AAO requested the applicant to provide this documentation but he has failed to do so. Thus, the AAO finds that the witness statements have little probative value and are not persuasive evidence of the applicant's residence in the United States during the requisite period.

The AAO also notes that at the time of the applicant's claimed entry into the United States in 1981, he was 9-years-old. The applicant has not provided any evidence of how he traveled to the United States at such a young age, who he traveled with, who he resided with and who cared for him during those early years. The applicant has provided no primary evidence to prove his

continuous residence in the United States such as, school records, medical or hospital records, or utility bills during the following seven years through May 4, 1988, as required under 8 C.F.R. § 245a.2(d)(3). The AAO notified the applicant in the NOID to provide such documents. The applicant has failed to provide the requested documents and has provided no explanation for the absence of such records.

The inconsistencies regarding the applicant's residence in the United States during the requisite period is material to his claim in that they have a direct bearing on the applicant's residence and employment in the United States during the requisite period. 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). The inconsistencies undermine the credibility of the applicant's claim and the credibility and the reliability of the witness statements as evidence of the applicant's continuous residence in the United States for the requisite period.

Given the paucity of evidence in the record, the AAO concludes that the applicant has failed to overcome the evidentiary deficiencies cited in the NOID. Accordingly, 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.