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U.S. Citizenship
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FILE: [REDACTED]
MSC-04-328-10596

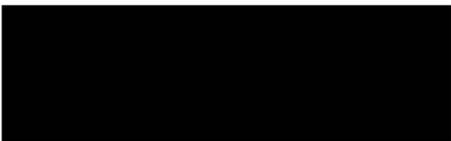
Office: NEW YORK

Date: DEC 11 2007

IN RE: Applicant: [REDACTED]

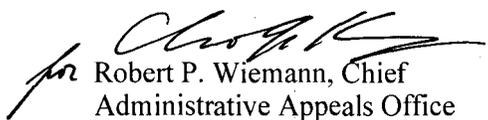
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.


for Robert P. Wiemann, 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, New York. 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on August 23, 2004. The director noted that affidavits submitted by the applicant did not contain valid contact information for the affiants and therefore were not amenable to verification. She further questioned their credibility and noted the absence of credible contemporaneous evidence submitted by the applicant in support of his application. The director therefore determined 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 period. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has provided contemporaneous evidence in support of his application. He further submits updated contact information for the affiants from which he submitted affidavits and he submits a statement in support of his appeal.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 23, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period as follows: [REDACTED] in "Port Worth," Texas from March of 1981 until June of 1981; and [REDACTED] in Flushing, New York from July 1981 until January of 1989. At part #31 where the applicant was asked to list all churches and organizations of which he was a member, he indicated that he was not a member of any organizations or churches. At part #32 where the applicant was asked to list all of his absences from the United States since his first entry, he indicated that during the requisite period, he was absent from October 10, 1987 until November 3, 1987 when he went to Pakistan to see his newborn child. At part #33 of his Form I-687 where the applicant was asked to list all of his places of employment since entering the United States, he indicated that he was self-employed as a driver from June of 1984 until he signed his Form I-687 on June 26, 2004. It is noted that the applicant did not indicate that he was working in the United States before June of 1984.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax

receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

- The applicant's social security card. It is not clear when this card was issued.
- A notice issued to the applicant on July 19, 1987 stating that on that date, the applicant passed the Taxi Institute test issued by the New York City Taxi Driver Institute.
- A photocopy of a check dated May 14, 1981 to the Stephen Aircraft School for five hundred (500) dollars for a fee. This check indicates that the joint owners of the account on which the check is drawn are the applicant and Stephen Aircraft School. The address shown on the check is ██████████ Fort Worth, Texas. It is noted that this is the address of residence that the applicant indicated he resided at from March to June of 1981.
- Photocopies of some pages of the applicant's passport as follows:
 - Pages 0 and 1 of passport ██████████. These pages indicate that the passport was issued on June 11, 1980 to the applicant. It shows the applicant's date of birth and indicates that the applicant has been employed as a businessman and a radio technician.
 - Pages 2 and 3 of passport ██████████. These pages indicate that the applicant permanently resided in Pakistan at the time the Passport was issued. They show the applicant's photograph, name and signature and indicate that he is Muslim.
 - Pages 10 and 11 of passport ██████████. These pages show that the United States Consulate in Karachi, Pakistan issued the applicant a multiple entry B1 visa on February 18, 1981 that expired on March 18, 1981. They also show that the applicant entered the United States in New York in March of 1981.

Birth Certificates for the applicant's children. Details are as follows:

- A birth certificate for ██████████ who was born on June 24, 1979. This birth certificate indicates that at the time of this child's birth, her father, the applicant, lived abroad. However, this birth certificate does not indicate which country the applicant lived in at that time. It is noted that this date occurred both before the requisite period and before the applicant indicated that he resided in the United States.
- A birth certificate for S ██████████ who was born on January 4, 1982 in Lahore, Pakistan. This birth certificate indicates that at the time of this child's birth, his father, the applicant, lived abroad. However, this birth certificate does not indicate which country the applicant lived in at that time.

- A birth certificate for [REDACTED] who was born on June 19, 1983 in Lahore Pakistan. This birth certificate indicates that at the time of this child's birth, her father, the applicant, lived abroad. However, this birth certificate does not indicate which country the applicant lived in at that time.
- A birth certificate for [REDACTED] who was born on October 15, 1986 in Lahore, Pakistan. This birth certificate indicates that the applicant resided abroad. However, it does not indicate his address of residence at that time.

The director issued a Notice of Intent to Deny (NOID) on March 13, 2006 in which she stated she found that this evidence was insufficient to meet the applicant's burden of establishing by a preponderance of the evidence that he had resided in the United States for the duration of the requisite period. The record indicates that in response to this NOID, on April 17, 2006 the Service received the following attestations from the applicant:

- A notarized affidavit from [REDACTED] that was notarized on July 20, 2006. It is noted that this date is after the date that the director issued her decision. Here, the affiant states that he has known the applicant since 1986. He states that the applicant came to the affiant's home on weekends and ate dinner. Here, the affiant does not indicate the dates through which the affiant came to his house. He does not indicate whether there were periods of time during which he did not see the applicant. He states that he met the applicant at the Mosque and that he and the applicant traveled to Atlantic City in May of 1988. It is noted that the applicant has indicated that he has no affiliation with any religious institutions on his Form I-687. As this affidavit does not pertain to the duration of the requisite period, it does not establish that the applicant has resided continuously in the United States for the duration of that time.
- An attestation from [REDACTED] that was notarized on March 9, 2006. Though she was not required to do so, Ms. [REDACTED] as included her marriage certificate from 1979 as proof that she resided in Queens, New York since 1979. In this attestation Ms. [REDACTED] states that she met the applicant in 1981. However, she does not indicate where she met him, or whether she met him in the United States. She fails to indicate the frequency with which she saw the applicant during the requisite period. Though Ms. [REDACTED] provides the applicant's current address, she does not provide an address at which it is personally known to her that the applicant resided during the requisite period. Ms. [REDACTED] asserts that she is related to the applicant and that he often visits her. However, she does not indicate when the applicant has visited her. Therefore, this attestation carries very little weight in establishing that the applicant resided in the United States for the duration of the requisite period.

The applicant's vehicle operator's license, New York State identity card issued in 1992, and his driver's licenses issued in 1994, and 2000 were issued after May 4, 1988. The issue in this proceeding is the applicant's residence in the United States during the requisite time period, which ended on the date the applicant attempted to file for legalization during the original filing period, which was between May 5, 1987 and May 4, 1988. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since March of 1981. He showed that he did not work in the United States until 1984. The only evidence submitted with the application that is relevant to the duration of the 1981-88 period in question is attestations from two (2) individuals. The record indicates that the Service attempted

to contact both individuals who wrote these attestations and was not successful. As these attestations were lacking in detail and were not amenable to verification, the Service found they did not carry sufficient weight to meet the applicant's burden of proof that he resided continuously in the United States for the duration of the requisite period with absences of less than forty-five (45) days during that time.

In denying the application, the director noted the above as well as the absence of contemporaneous evidence to support the applicant's claim. She therefore, found that the applicant was not eligible to adjust status to that of a Temporary Resident and denied the application.

On appeal, the applicant submits an affidavit on his own behalf. This affidavit appears to have been made on July 10, 2006, though the month is not written clearly. In this statement, the applicant states that he has submitted proof that he entered the United States in March of 1981, that the social security card he submitted previously was issued to him in 1981, and that the attestations he has submitted establish that the affiants have known him since 1981. He goes on to say that he was not able to work for an airline company in the United States after completing his course at the Stephen Aircraft School because he was not a legal permanent resident at that time. He states that because of this, he began working at a newsstand. It is noted here that the applicant did not indicate that he worked at a newsstand on his Form I-687. The applicant further asserts in this affidavit that at the time of his interview, though he took some time to respond as to when his wife visited him in the 1980s, this was because those visits occurred long ago. He notes that he has included his children's birth certificates. It is noted that these birth certificates are in the record. It is further noted that each birth certificate submitted, including the birth certificate of the applicant's child who was born in 1979, indicate that he was not living in Pakistan at the time of their birth. However, as these birth certificates do not indicate where the applicant was living, they do not establish that he was residing in the United States.

The applicant also submits phone numbers at which affiants [REDACTED] and [REDACTED] can be reached with his appeal. The applicant did not submit additional evidence with his appeal.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, here, the applicant has provided one postmarked notice and one check that appears to be written from a joint account that he owns with an aircraft school written to that school as evidence that he resided continuously in the United States for the duration of the requisite period. He has submitted attestations from only two (2) people concerning that period, neither of which is sufficiently detailed to allow the applicant to meet his burden of proof. He also asserted that he worked at a newsstand in a statement submitted with his appeal. However, this is not consistent with what he showed on his Form I-687 where he showed he has only been employed as a driver. On appeal, he did not submit any additional evidence to establish that he maintained continuous residence in the United States for the duration of the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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. Given the applicant's contradictory testimony regarding his employment and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United

States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.