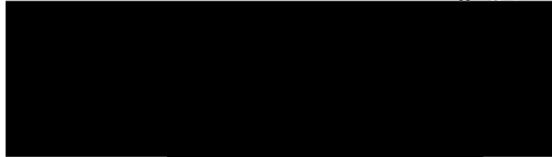


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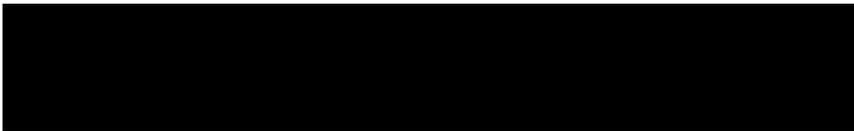
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Date: AUG 02 2007

IN RE: Applicant:



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.

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

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel for the applicant asserts that the applicant submitted credible affidavits to establish his presence in the United States. Counsel maintains that the contradictions in the applicant's testimony are a result of his lack of fluency in English.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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 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 (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 for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on March 17, 2005. Part 30 of this application requests the applicant to list all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Brooklyn, NY from July 1981 until July 1985 and 622 [REDACTED] Brooklyn, NY from August 1985 until June 1989. Part 33 of the application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with [REDACTED] Construction Corporation as a construction helper from July 1981 until June 1985 and [REDACTED] Construction Company as a construction helper from July 1985 until June 1989. This information indicates that the applicant has resided in the United States during the requisite period; however this claim is not corroborated by credible and probative evidence.

An alien applying for adjustment of status under this part 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). 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). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. *Id.* The applicant has submitted various documents in support of his application to demonstrate his residence in the United States. For the purpose of this proceeding, this decision will focus on the documentation that serves to corroborate the applicant's residence in the United States during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides and illustrative list of documentation that may be provided 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.

The applicant submitted two letters from his purported former employers, ██████████ Construction Corporation and ██████████ Contracting Corporation. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and 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 (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letters from ██████████ Construction Corporation and ██████████ Contracting Corporation do not meet the criteria delineated in the regulations. The letter from ██████████ Construction Corporation provides that the applicant was a construction helper from July 1985 until June 1989. The letter from ██████████ Contracting Corporation provides that the applicant was a construction helper from July 1981 until June 1985. These letters fail to provide the applicant's address during the time period of his purported employment. The letters also fails to explain whether the authors have personal knowledge of the applicant's employment. Furthermore, the letters fail to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable.

The applicant has submitted several letters from cultural and religious organizations. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by churches, unions or other organizations should show the applicant's inclusive dates of membership and state the address where the applicant resided during the membership period. The applicant submitted letters from [REDACTED] General Secretary of the Bangladesh Society, Inc., New York and [REDACTED] President of the Lakshmi Pur District Welfare Association U.S.A. Inc. These letters provide that the applicant is a member of the organizations and the authors have known the applicant for the past twenty (20) years. The letters fail to satisfy the guidelines delineated in 8 C.F.R. § 245a.2(d)(3)(v). The letters fail to specify the applicant's dates of membership. It is unclear whether the authors have known the applicant for the past twenty years as members of their organizations or on a personal basis. Further, the letters fail to corroborate the applicant's residence in the United States during the requisite period by providing the address he resided at during the membership period. Additionally, the applicant submitted a letter from [REDACTED] General Secretary, Jame Masjid Bangladesh Muslim Center, Inc. This letter provides, "[I] [d]o hereby confirm that [REDACTED] was residing at [REDACTED], Brooklyn, NY-11218. Was performed [sic] weekly Jumah-Salah at our Mosque from 1987 to June, 1989. And he is a Member of our Bangladesh Muslim center Inc." This letter fails to indicate whether the author has personal knowledge of the applicant's involvement in the mosque during this time period. Further, this letter is vague because it fails to specify the dates of the applicant's membership at the Bangladesh Muslim Center. Part 31 of the Form I-687 application requests the applicant to list affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant responded that he has been a member of the Bangladesh Muslim Center in Brooklyn, NY for the last twenty years. This response also fails to indicate his exact dates of membership with this Center.

The applicant submitted copies of two aerogram envelopes, containing Bangladesh postmarks dated July 11, 1982 and August 28, 1981. These envelopes are addressed to the applicant at his address in Brooklyn, NY. While these documents are probative evidence of the applicant's residence in the United States during the requisite period, they alone do not satisfy the applicant's burden of proof because they are not original documents. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6).

An applicant may also provide "any other relevant document" as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted numerous statements to corroborate his period of continuous residence during the requisite period. 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.

The applicant has submitted eight (8) fill in the blank statements entitled "Affidavit of Witness" from [REDACTED]

[REDACTED] and [REDACTED]. However, these statements lack significant detail. The statements fail to provide details on the beginning of the authors'

acquaintance with the applicant and the extent of their contact with the applicant during the requisite period. These statements also fail to provide the applicant's address or any other information regarding the applicant's residence during the requisite period. Therefore, these documents can only be given minimal value as credible and probative evidence of the applicant's residence in the United States during the requisite period.

Additionally, the applicant submitted five (5) other statements that are similarly not credible and probative evidence because they lack significant detail. The applicant submitted a statement from [REDACTED] which provides that he has known the applicant since meeting him at the Madina Mosque, [REDACTED] New York in December 1983. However, the applicant failed to indicate on his Form I-687 application that he has ever been involved with the Madina Mosque. The applicant submitted a statement from [REDACTED], which provides that he has known the applicant since 1984. This statement fails to provide any information on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period. The applicant submitted a statement from [REDACTED], which states that he has known the applicant since 1981 and they "have done many social and cultural activities together." This statement also fails to provide any information on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period. The applicant submitted a statement from [REDACTED] which states that he has known the applicant since 1985. This statement provides, "I seen to him Bangladesh Annual cultural functions [sic]. And always I meet with him Salatul Jummah in Bangladesh Muslim center Jame inc. Mosque [sic]." This statement again fails to specify [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period. The applicant submitted a statement from [REDACTED], which states that he has known the applicant since December 1983. This statement provides, "I first meet with [REDACTED] at Fulton Mall down town Bro[o]klyn NY [sic]." This statement similarly fails to provide details on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period.

Finally, the applicant submitted a statement from [REDACTED] which provides that he has personal knowledge of the applicant's address at [REDACTED], Brooklyn, NY 11218 from August 1985 until June 1989 because they shared monthly rent and utility bills. Similarly, the applicant submitted a statement from [REDACTED] which provides that he has personal knowledge of the applicant's residence at [REDACTED] F, Brooklyn, NY-11226 from July 1981 to July 1985 because they shared monthly rent and utility bills. Although these statements provide some detailed information on the authors' relationship with the applicant during the requisite period, they do not alone satisfy the applicant's burden of proof. As stated above, the "preponderance of the evidence" standard requires that the evidence demonstrate 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 viewing the totality of the evidence, the applicant has not demonstrated by a preponderance of the evidence that he has resided in the United States during the requisite period.

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). Prior to the denial of the application, the applicant was issued a Notice of Intent to Deny (NOID), where he was provided thirty (30) days to submit additional evidence. The director's NOID provides, in part, "[c]redible affidavits are those which include . . . some proof that there was relationship between you and the affiant such as photos, etc., or proof that the affiant has direct personal knowledge of the events being attested. Given these omissions, the affidavits that you provided fail to meet the aforementioned criteria." Counsel for the applicant submitted a written rebuttal statement in response to the NOID, which fails to directly address this deficiency. Counsel's statement provides, "[redacted] is unable to communicate properly in English, as it is not his primary language. Therefore, his ability to express months and dates correctly, in English, is inadequate and [redacted] requires that a translator be present to fully express his responses. Further, in light of this, the veracity of affidavits submitted on behalf of [redacted] should no longer be in doubt." The director issued a Notice of Decision to deny the application, which provides, in part, "[c]redible affidavits are those, which include . . . some proof that there was a relationship between you and the affiant . . . Given the paucity of the evidence contained in the record, you have failed to submit documents that would constitute a preponderance of evidence as to your residence in the United States." On appeal, counsel for the applicant submitted a written brief, which provides, "[w]e wish to state that all evidence, including affidavits and documents, are bona fide and genuine. All affiants are willing and able to confirm their statements, and have made all statements in good faith, to the extent that their memory serves them. Each affiant submitted his or her ID along with their respective affidavits." It should be noted that none of the affidavits or statements contain an identity card of the affiant, as asserted by counsel. Counsel was twice given the opportunity, in response to the NOID and then on appeal, to supplement the record with amended statements containing the requested information. However, additional evidence was not submitted in support of the application. The applicant's failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

The absence of sufficiently detailed supporting 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 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.