

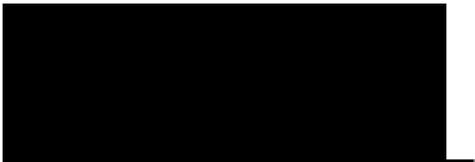
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-04-353-10525

Office: NEW YORK

Date: **AUG 06 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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, the applicant asserts he has lived in the United States since prior to January 1, 1982. The applicant submits additional documentation as corroborating evidence of his residence in the United States.

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 filed 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 September 17, 2004. Part 30 of this application requests the applicant to list his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Astoria, NY from April 1980 until August 1990. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with Shagorika Bangladesh Restaurant as a dishwasher from July 1980 until December 1985 and NEI as a cleaner from January 1986 until November 1992. The information provided by the applicant on his Form I-687 indicates that he has resided in the United States during the requisite period; however this claim is not supported by relevant, probative and credible evidence.

An applicant for temporary resident status 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). There is no catch-all definition of the term "preponderance of the evidence." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). Whether an applicant has submitted sufficient evidence to meet his burden of proof under section 245A of the Act will depend upon the factual circumstances of each case. *Id.* Generally, however, when something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. *Id.* 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 applicant had submitted with his Form I-687 application a variety of documentation to establish his residence in the United States during the requisite period. The applicant submitted with his Form I-687 application a Social Security Number application receipt, letters from two employers, a medical letter, and four notarized statements.

The applicant's receipt for an application for a Social Security Number is dated August 15, 1987. The applicant has submitted only a copy of this receipt. 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). Hence the copy of this receipt alone is not probative evidence of the applicant's residence in the United States on this date.

The applicant submitted notarized statements from [REDACTED] and [REDACTED]. The statement from [REDACTED] provides, "I have personal and first hand knowledge of the absence[s] of [REDACTED] from the United States of America . . . From May 18, 1987 to Jun[e] 19[,] 1987. He went to Canada and I know this because he was staying with me and I was present while he was living by car." The statement from [REDACTED] provides, "I personally know [REDACTED] since 1981. We have been in contact during last 25 years." The statement from [REDACTED] provides, "I have known [REDACTED] since 1980." These three statements lack significant detail because they fail to provide any information on how the authors became acquainted with the applicant and their contact with the applicant during the requisite period.

The statement from [REDACTED] provides, "the above reference named individual [REDACTED] is my neighbor with whom I am acquainted in 1980 here in Brooklyn, NY. He is also my close friend and well wisher. He entered the United States before January 1, 1980. He has been residing continuously in the United States in an unlawful manner except for an innocent brief absence." This statement provides some information on [REDACTED] acquaintance and contact with the applicant during the requisite period, since [REDACTED] claims that he was the applicant's neighbor. However, [REDACTED] assertion that the applicant entered the United States before January 1, 1980 is inconsistent with the applicant's claimed entry date of April 1980.

The applicant submitted a letter from [REDACTED], Always-Helthways Doctors Office, which states, "[the applicant] was my treatment Since May 1982 August 1982 [sic]. He was suffering Hear pain [sic]. He last visit was in my office October 1982 and was found Well and fit for normal duties of life [sic]." The letter from [REDACTED] is dated August 18, 1991 and it

refers to treatment given to the applicant between May 1982 and August 1982. This letter lacks detail in that it fails to specify [REDACTED] recollection of providing medical treatment to the applicant nine years prior to the date of the letter. The letter also does not specify the type of medical treatment the applicant received nor does it contain medical records to verify that the treatment was given to the applicant.

The applicant submitted two letters from his purported former employers, Shagorika Bangladesh Restaurant, Inc., dated August 20, 1991, and NEI, dated August 8, 1992. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide 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 Shagorika Bangladesh Restaurant, Inc. and NEI do not meet the criteria delineated in the regulations. The letter from Shagorika Bangladesh Restaurant, Inc. provides that the applicant was a cleaner at the restaurant from July 1980 to December 1985. The letter from NEI provides since January 1986 the applicant has been a part time helper of the organization. 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. It should also be noted that the letter from NEI fails to specify the applicant's duties, other than stating that the applicant was a "par[t] time helper."

Based on the above noted discrepancies, the documentation submitted to corroborate the applicant's Form I-687 application fail to satisfy the applicant's burden of proof in this proceeding. The applicant has not established by a preponderance of the evidence his residence in the United States during the requisite period, pursuant to 8 C.F.R. § 245a.2(d)(5). Viewed either by itself or within the totality of the circumstances, the evidence does not establish that the applicant's claim is "probably true." See *Matter of E-M-*, *supra*.

Prior to the issuance of the notice to deny the applicant's Form I-687 application, the applicant was given an opportunity to rebut the director's ineligibility determination. On March 13, 2006, the director issued a Notice of Intent to Deny (NOID) the application for failure to establish continuous residence in the United States during the requisite period. The director afforded the

applicant thirty (30) days to submit additional evidence to overcome this determination. The applicant responded to the NOID with a notarized rebuttal statement, which provides:

That I had entered the United States on 06/10/80 and since that date I had been continuously physically present in the United States in an unlawful manner except for a humanitarian short absence. That be it also mentioned here that my old passport on which I had traveled earlier and all other valuable old documents regarding my immigration matter were kept as safe custody with one of my relatives. But unfortunately that relative suddenly passed away many years ago being attacked by heart diseases. After his death I tried to retrieve my all documents. But I was failed [sic] because there was none to say exactly where my documents were kept during his lifetime. So I could not submitted any more documents except those, which I submitted with my original application in respect of my entrance and continuous residency into the United States.

The applicant's assertion that his documents were lost after the death of his relative, who was handling the documents, is unsupported by objective evidence. 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 applicant failed to provide the identity of his relative and documentation of his relative's death. The applicant also failed to specify the contents of the "valuable old documents" he mentions in his rebuttal. Moreover, the applicant's assertion that he entered the United States on June 10, 1980 is inconsistent with his Form I-687 application. The applicant's Form I-687 provides that the applicant resided at [REDACTED] Astoria, NY from April 1980 until August 1990. For these reasons, this written rebuttal does not overcome the director's finding of ineligibility.

On appeal, the applicant submitted six (6) written statements from persons who claim that they can attest to his residence in the United States during the requisite period.

The applicant submitted a statement from [REDACTED] which provides, "I have personal knowledge that [REDACTED] had entered the United States in the month of June/80 illegally without any valid documents with the help of smugglers. After his entrance into the United States he used to contact me regularly. And also since my entrance into the United States in 1982 we meet each other regularly and join other social and cultural activities." This statement is vague in that it fails to provide detailed information on [REDACTED]'s contact with the applicant during the requisite period.

The applicant submitted a letter from [REDACTED] General Secretary, the Islamic Council of America Inc., [REDACTED]. This letter provides, [REDACTED] is personally known to me for a long time[.] [H]e usually meet with me while he performed his Jummah prayer (Friday prayer) in the Madina Masjid." [REDACTED] states in his letter that he has known the applicant for "a long time," however he fails to specify the number of years he has known the applicant.

The applicant submitted a notarized statement from [REDACTED] which provides, "I do hereby certify that [REDACTED] is well known to me since 1981. Since then I found him continuously physically present in the United States in an unlawful status expect for a short absence." The applicant also submitted a statement from [REDACTED] which provides, "I do hereby certify that [REDACTED] . . . is personally known to me since 1985. [REDACTED] is very much active in the community activities." These statements are again vague and lack considerable detail. The statements fail to provide detailed information on the authors' contact with the applicant during the requisite period. The statements also fail to specify the authors' personal knowledge of the applicant's continuous physical presence in the United States during the requisite period.

The applicant submitted copies of two notarized statements from his relatives in Bangladesh, [REDACTED] and [REDACTED]. The statement from A [REDACTED] provides, [REDACTED] . . . is my nephew who entered the United States in the month of June of 1980 without any legal paper by smugglers . . . he had been continuously residing in the United States since his first entrance." The statement from [REDACTED] provides, [REDACTED] . . . is my younger brother. He entered the United States on 06/10/80 without any legal paper by smugglers . . . he had been continuously residing in the United States since his first entrance." 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). Since the authors of these statements reside in Bangladesh, their statements cannot be subject to verification.

Based on the above noted discrepancies in the evidence, the documentation submitted on appeal fails to establish either by itself or within the totality of the circumstances that the applicant's claim is "probably true." *See Matter of E-M-, supra*. Therefore, these documents do not satisfy the applicant's burden of proof of establishing by a preponderance of the evidence his continuous residence in the United States during the requisite period. *See* 8 C.F.R. § 245a.2(d)(5).

In conclusion, 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 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.