

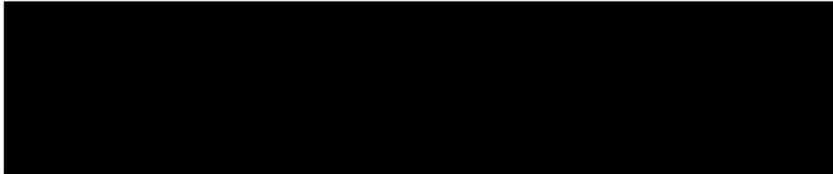
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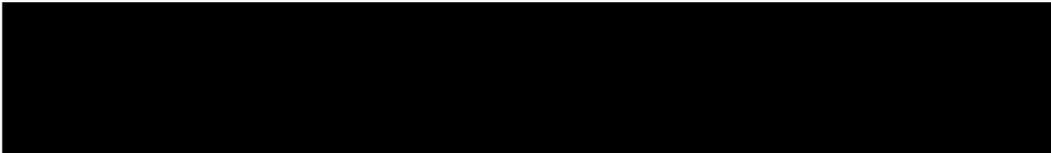
FILE: [REDACTED] Office: NEW YORK
MSC 04 300 10041

Date: AUG 08 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.


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

The district 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 district 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 that the reason for his absence outside the United States was "quite humanitarian and beyond my control." The applicant submits two affidavits.

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. See 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 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 26, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Sunnyside, New York” from August 1981 to August 1985 and at [REDACTED] Astoria, New York” from September 1985 to December 1990.

At his interview with a CIS officer on March 6, 2006, the applicant stated under oath that he first entered the United States from Canada without inspection on August 22, 1981, in the company of his uncle, [REDACTED] “without any passport, visa, or other papers.” He further stated that he was in Bangladesh “visiting his family” from September 16, 1987 to November 10, 1987, a total of 55 days. The applicant explained that he re-entered the United States without inspection from Canada near Buffalo, New York. When asked by the CIS officer if he had any other absences outside the United States during the requisite period, the applicant responded that this 1987 absence was his only absence outside the United States.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an employment affidavit dated June 30, 2004, from [REDACTED] Manager of [REDACTED] located at [REDACTED] Brooklyn, New York. [REDACTED] stated that the applicant worked for his company from October 1981 to February 1986 and that he was paid \$5.00 per hour in cash. However, [REDACTED] did not provide the applicant's duties during his employment for his company, nor did he provide the applicant's addresses throughout the period of his employment for that company.

The applicant also submitted an affidavit dated June 13, 2004, from [REDACTED] of Elmhurst, New York. [REDACTED] stated that he had known the applicant since 1981. [REDACTED] further stated that he went to the local legalization office on November 25, 1987, at the request of the applicant to file his legalization application, but the officer refused to accept the application because the applicant was outside the United States in 1987. [REDACTED] does not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant included an affidavit dated July 20, 2004, from [REDACTED]. [REDACTED] stated that he had known the applicant since 1981. He further stated that he went to the local legalization office on November 25, 1987, at the request of the applicant to file his legalization application, but the officer refused to accept the application because the applicant was outside the United States in 1987. [REDACTED] does not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States throughout the requisite period. It is noted that the wording of this affidavit is identical to the affidavit signed by [REDACTED]

The applicant also included an affidavit dated May 25, 2004, from [REDACTED]. [REDACTED] stated that he had known the applicant since 1981. [REDACTED] stated that he sometimes visited the applicant at his home and he and the applicant are close friends. [REDACTED] provided the applicant's current address, but he did not provide the applicant's addresses in the United States during the requisite period.

The applicant provided an affidavit dated May 25, 2004, from [REDACTED] of Teaneck, New Jersey. [REDACTED] stated that the applicant approached him in 1981 looking for a job. [REDACTED] explained that he questioned the applicant about his status in the United States, and the applicant told him that he had entered the United States without inspection on August 22, 1981, and was trying to legalize his status. [REDACTED] states that the applicant worked for him during the period from 1985 to 1988. However, [REDACTED] does not provide any information regarding the type of work he does or the type of work the applicant performed for him. Nor does he provide any verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant submitted a personal affidavit dated July 20, 2004. He stated that he originally entered the United States without inspection on August 22, 1981. He further stated that he left the

United States on September 16, 1987, to visit his family in Bangladesh. He states that he flew back to Canada and re-entered the United States from Canada without inspection on November 10, 1987.

On April 13, 2006, the district director issued a notice informing the applicant of her intent to deny the application because the applicant had been outside of the United States for over 45 days during the requisite period and because the applicant had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence in support of his claim.

Counsel, in response, requested that "the file be carefully reviewed as to [REDACTED] eligibility for this application." Counsel indicated that the applicant was in the process of obtaining additional affidavits to corroborate his claim. Counsel did not submit any additional evidence.

On appeal, the applicant states that the his absence outside the United States was "quite humanitarian and completely beyond my control as my father was at critical condition being attacked by serious diseases."

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In this case, the applicant has stated that he was in Bangladesh for 55 days during the requisite period. This absence exceeds the 45-day period allotted for a single absence. The applicant claims, on appeal, that he was in Bangladesh for more than the allotted 45-day period because his father was critically ill. It is noted that the applicant did not advance this claim until after the application had been denied, in part, due to this 55-day absence. He stated on the Form I-687 application and during the legalization interview that he was in Bangladesh visiting family, but he never indicated that his visit was due to his father's illness or that he intended to return to the United States sooner but his stay in Bangladesh was extended because of his father's illness. The applicant has not submitted any independent evidence to corroborate his claim that he was in Bangladesh for an extended period due to his father's illness or that his stay was extended beyond the allotted 45 days for a single absence due to his father's condition. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day

period. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

The applicant submits an affidavit dated May 13, 2006, from [REDACTED]. [REDACTED] states that he has known the applicant since 1981 and that he has personal knowledge that the applicant entered the United States before January 1, 1982 and has resided continuously in the United States since that date. However, [REDACTED] did not provide any information regarding the basis of his acquaintance with the applicant or how he knows that the applicant first entered the United States prior to January 1, 1982. Nor did he provide any verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant also submits an affidavit dated April 12, 2006, from [REDACTED] of Dhaka, Bangladesh. [REDACTED] states that the applicant, who is a close friend of his, entered the United States before January 1, 1982. [REDACTED] explains that before the applicant left Bangladesh for the United States, a [REDACTED] was held for the applicant at his house "with a view to beseech clemency of Allah as if he can enter the United States safe without any hindrance." However, [REDACTED] does not provide any verifiable information such as the applicant's addresses in the United States during the requisite period.

It is noted that the record of proceeding contains a photocopy of the applicant's Bangladeshi passport No. [REDACTED]. This passport was issued in New York, New York, on January 12, 2001, with an expiration date of January 11, 2001. The validity of the passport was subsequently extended until January 11, 2007. An official notation on Page 9 of the passport indicates that the applicant had previously traveled on a Bangladeshi passport, number not known, issued in Dhaka, Bangladesh, in 1986. The applicant did not list any trips to Bangladesh in 1986 on the Form I-687. In fact, the applicant specifically stated during his legalization interview that his trip to Bangladesh in 1987 was his only absence outside the United States during the requisite period. The applicant has not provided any explanation as to how he could have been issued a passport in Dhaka in 1986 if he was residing in the United States at that time. This discrepancy in the applicant's claimed dates of absence outside the United States raises questions of credibility regarding 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. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from six people concerning that period, all of which lack sufficient detail or verifiable information to corroborate the applicant's claim. Additionally, by his own testimony, the applicant was outside the United States for more than 45 days during the requisite period.

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 55-day absence outside the United States, his contradictory statements regarding his absences outside the United States, 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.