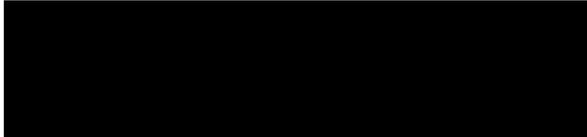




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:



Office: New York

Date: **AUG 09 2007**

MSC 05 183 10361

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates his claim of residence in this country since prior to January 1, 1982 and states that any inconsistencies in testimony regarding his residence were the result of his poor communication skills. The applicant submits documentation in support of his appeal.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 April 1, 2005. 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 listed [REDACTED] in Brooklyn, New York from May 1981 to December 1984 and [REDACTED] in Manalapan, New Jersey from January 1985 through at least the date of the termination of the original legalization application period on May 4, 1988. Further, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., in the United States, the applicant listed Bangladesh Society Inc., in Elmhurst, New York from January 1983 through the present and The Greater Noakhali Society USA Inc., in Brooklyn, New York from August 1993 through the present. In addition, at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States dating back to January 1, 1982, the applicant listed a trip to Canada to meet with friends from November 1987 to December 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] stated that he had been living in the United States since 1985 and first met the applicant on an unspecified date at [REDACTED] and [REDACTED] in Brooklyn, New York.

The applicant included an affidavit signed by [REDACTED] who noted that he had been living in this country since 1982 and first met the applicant on an unspecified date on [REDACTED] in Brooklyn, New York.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] declared that he lived in the United States since 1984 and first met the applicant on an unspecified date on [REDACTED] near Church Avenue in Brooklyn, New York.

The applicant submitted an affidavit signed by [REDACTED] who asserted that he had been living in this country since 1985 and first met the applicant on an unspecified date in the [REDACTED] Restaurant in Brooklyn, New York.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] indicated that he lived in the United States since 1978 and first met the applicant on an unspecified date at the Bangladesh Muslim Center Mosque in Brooklyn, New York.

The applicant provided an affidavit signed by [REDACTED] who stated that he had been living in this country since 1978 and first met the applicant on an unspecified date at the [REDACTED] subway station near [REDACTED] and [REDACTED] in Brooklyn, New York.

The applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] noted that he lived in the United States since 1972 and first met the applicant on an unspecified date at the Bangladeshi Grocery and the Bangladesh annual picnic in Brooklyn, New York.

The applicant included an affidavit signed by [REDACTED] who declared that he had been living in this country since 1976 and first met the applicant on an unspecified date in Queens, New York and Brooklyn, New York.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] asserted that he lived in the United States since 1980 and first met the applicant on an unspecified date in Brooklyn, New York. [REDACTED] indicated that [REDACTED] worked with the applicant in different places and met with him at the mosque. While [REDACTED] claimed that he worked with the applicant, he failed to specify the names of any employer with whom he and the applicant had worked together.

The applicant submitted an affidavit signed by [REDACTED] who stated that he had been living in this country since 1987 and was a close friend of the applicant. [REDACTED] testified that he first met the applicant on an unspecified date in Brooklyn, New York.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] noted that he lived in the United States since 1982 and previously knew the applicant from his home country. [REDACTED] contended that he first met the applicant in this country in Brooklyn, New York on an unspecified date.

The applicant provided an affidavit signed by [REDACTED] who declared that he had been living in the United States since 1981 and first met the applicant on an unspecified date at the Bangladeshi Grocery and the Bangladeshi Mosque in Brooklyn, New York.

The twelve affidavits cited above have no probative value as none of the affidavits contain any direct and specific testimony relating to the applicant's continuous residence in this country during the requisite period.

The applicant submitted an undated letter that is signed by [REDACTED]. [REDACTED] asserted that the applicant visited with him at his home in Montreal, Canada from November 20, 1987 to December 20, 1987. [REDACTED] indicated that the applicant crossed the border at Buffalo, New York without a visa or inspection both when he entered Canada and subsequently returned to the United States. However, the affiant failed to provide sufficient details and specific verifiable information relating to the applicant's residence in this country for any portion of the requisite period.

The applicant included a letter included a letter containing the letterhead of The Greater Noakhali Society USA Inc., New York in Brooklyn, New York that is dated March 18, 2005 and signed by the president of this organization [REDACTED]. In his letter, [REDACTED]

included the applicant's most current address of residence and testified that the applicant maintained membership in this organization from its founding on August 19, 1993 through the present. [REDACTED] indicated that he had known the applicant since March of 1981 as he stated that he had known the applicant for twenty-four years. Although [REDACTED] provided the applicant's most current address, he failed to attest to any of the applicant's previous addresses of residence in the United States including that period from prior to January 1, 1982 through the date of the termination of the original legalization application period on May 4, 1988.

The applicant provided a letter containing the letterhead of the Bangladesh Society Inc., New York in Elmhurst, New York that is dated August 20, 2004 and signed by the publicity and public relation secretary of this organization [REDACTED]. [REDACTED] included the applicant's most current address of residence and declared that the applicant was an active member in this organization who participated in the social and cultural activities of the community. [REDACTED] indicated that he had known the applicant since August of 1984 by stating that he had known the applicant for twenty years. While [REDACTED] provided the applicant's most current address, he failed to note any of the applicant's previous addresses of residence in the United States since the beginning of their acquaintance in August 1984. In addition, [REDACTED] failure to include any of the applicant's addresses of residence other than his most current during that entire period the applicant was a member of the Bangladesh Society Inc., is contrary to requirements of 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted two letters containing the letterhead of [REDACTED], General Contractor in Brooklyn, New York that are both signed by [REDACTED] and dated March 10, 2005 and March 15, 2005, respectively. In the letter dated March 10, 2005, [REDACTED] provided the applicant's most current address and asserted that he had employed the applicant as a general worker since September 10, 1981. In the letter dated March 15, 2005, [REDACTED] indicated that the applicant resided with him at [REDACTED] in Brooklyn, New York from May 13, 1981 to December 1984. However, [REDACTED] failed to provide the applicant's addresses of residence in that period from January 1985 through the date of the termination of the original legalization application period on May 4, 1988 as required under 8 C.F.R. § 245a.2(d)(3)(v), despite the fact that he claimed to have employed the applicant on a continual basis beginning September 10, 1981.

The applicant submitted a letter containing the letterhead of [REDACTED] Diner-Restaurant in Manalapan, New Jersey that is signed by [REDACTED]. [REDACTED] declared that he had employed the applicant at his restaurant since January 1985 and that he provided the applicant with an apartment since such date up until June 2004. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 to December 1985.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application at the CIS office in New York, New York on December 12, 2005. The record contains a sworn statement that was signed by the applicant in which he declared that he had only one absence from the United States since he arrived on March 13, 1981 when he traveled from October 7, 2005

to December 2, 2005. The record also contains photocopied pages of the applicant's Bangladeshi passport with stamps reflecting his arrival in Bangladesh on October 7, 2005 and return to this country on December 3, 2005. The applicant's sworn testimony that he had only one absence from the United States since he arrived on March 13, 1981 when he traveled from October 7, 2005 to December 2, 2005 contradicted his prior testimony that he had also been absent from this country when he traveled to Canada to see friends from November 1987 to December 1987 at part #32 of the Form I-687 at part #32 of the Form I-687 application.

In the notice of intent to deny issued on February 9, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982. Specifically, the district director noted the deficiencies discussed above regarding the applicant's supporting documentation, as well as noting that the applicant's credibility had been undermined as a result of his contradictory testimony relating to the number of his absences from the United States. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted a statement in which he declared that he had lost all contemporaneous documents relating to this continuous residence in the United States since prior to January 1, 1982. The applicant indicated that he was attempting to obtain further affidavits and declarations in support of such claim. The applicant also took blame for any discrepancies in his testimony relating to the number of his absences from this country. The applicant claimed that he misunderstood a question that was asked during his interview and thought that he had been asked how many of his absences involved his return to Bangladesh rather than the total number of his absences from the United States. The applicant reiterated his claim that he traveled to Canada in 1987.

The district director determined that the applicant had failed to overcome the basis of the intended denial as put forth in the notice of intent to deny, and, therefore, denied the application on March 17, 2006.

On appeal, the applicant reiterates his claim of residence in this country since prior to January 1, 1982 and repeats his assertion that any inconsistencies in his testimony regarding his number of absences from this country were the result of miscommunication. The explanation put forth by the applicant is considered sufficient under the circumstances to overcome this particular discrepancy relating to his total number of absences. However, the applicant did not address the fact that the testimony of those individuals who provided supporting documentation lacks sufficient detail and verifiable information to corroborate his claim of residence in the United States for the requisite period.

The applicant submits a new letter from [REDACTED] who reiterates his declaration that he had employed the applicant at his restaurant since January 1985 and that he provided the applicant with an apartment since such date up until June 2004. However, [REDACTED] again failed to attest to the applicant's residence in the United States from prior to January 1, 1982 to December 1985.

The applicant includes an affidavit that is signed by [REDACTED] [REDACTED] provides the applicant's most current address of residence and states that he first met the applicant in 1983 and maintained a casual relationship with him since such date. However, [REDACTED] fails to provide any relevant verifiable information, such as the applicant's address of residence in the United States, which would tend to corroborate the applicant's claim of residence in this country from 1983 through the date of the termination of the original legalization application period on May 4, 1988. In addition, [REDACTED] fails to provide any testimony relating to the applicant's continuous residence in the United States from prior to January 1, 1982 through the date he and the applicant first met in 1983.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting 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 May 4, 1988 as required under section 245A(a)(2) of the Act. 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.