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[Redacted]

FILE: [Redacted]
MSC-06-101-23273

Office: NEW YORK

Date: DEC 19 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:

[Redacted]

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 your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 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 January 9, 2006. The director 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 the director failed to consider his rebuttal.

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 director issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006. The applicant responded to the NOID on April 26, 2006. On July 16, 2007, the director issued a second NOID to the applicant. The applicant failed to respond to the director's latter NOID. The director denied the applicant's I-687 application on August 27, 2007 for the reasons listed in her NOID.

The director stated in the July 16, 2007 NOID that the applicant was interviewed on June 15, 2006, in connection with his I-687 application. The director further stated that during the interview, the applicant stated under oath that he first entered the United States from Bangladesh, through the Bahamas, without inspection; however, he failed to submit primary evidence or corroborative evidence of such entry. The director noted discrepancies in the applicant's

statements, I-687 applications, and passport information as they relate to his claimed absence from the United States in 1982, including the absence of independent documentation to demonstrate his manner of departure from and arrival back into the country. The director also noted discrepancies in the applicant's listed address in the United States from January 1991 through September of 1991, in that the applicant provided one address on his I-687 application, which was distinctly different from that which he had listed on his passport (No. [REDACTED]).

The director further noted a discrepancy concerning the applicant's alleged initial entry into the United States; where the applicant indicated on his I-687 application that he entered the United States in April of 1981, but that his Form G325A (Biographic Information) signed and dated April 29, 2002, showed his last address outside of the United States was in Bangladesh from February 1958 to November of 1982. The director continued by noting that in the applicant's I-687 application dated December 28, 2005, he indicated that after his reentry into the United States in November of 1982, his second absence from the United States began in October of 1993. The director stated that this information conflicted with the information that the applicant provided on his Form G325B, in that he indicated on that application that he married in Dhaka Bangladesh on March 8, 1991. The director expressed her overall concern with the multiple discrepancies found by noting that the statements and evidence produced by the applicant were not credible.

In further evaluating the evidence submitted by the applicant, the director stated in the NOID that the applicant had failed to submit credible documentation that would constitute by a preponderance of the evidence that he had resided in continuous unlawful status in the United States during the statutory period. The director stated that the affidavits submitted by the applicant were not clear and consistent. She elaborated on her position by reviewing and evaluating the affidavit of [REDACTED] dated April 25, 2006, which was submitted by the applicant in response to the director's Notice of Intent to Deny dated March 29, 2006. Based upon the director's review, she determined that the affiant had failed to provide evidence in support of his statement; that his statement was in direct conflict with the applicant's with regard to the time period in which the applicant lived in Florida; and that the affiant was unclear as to the date that he accompanied the applicant to the INS Legalization office. The director further noted in her evaluation that the applicant had failed to submit evidence of ever filing a completed Amnesty application, or evidence of a "brief absence" from the United States that would have been the basis to deny or reject such application.

In examining the mailing envelopes submitted by the applicant as evidence, the director determined that they were postmarked in Bangladesh, but that there had been no proof provided by the applicant that such mail was ever acknowledged by the United States Postal Service (USPS). The director further determined that the mailing envelopes appeared to have been deceitfully created or obtained. The director also determined that the evidence submitted by the applicant lacked probative value, and she quoted the Section 212(a)(6)(C)(i) of the Act as it relates to fraud and willful misrepresentation on the part of an alien in an attempt to procure benefits under the Act.

In conclusion, the director stated that the applicant had failed to meet his burden of proof in order to qualify for Temporary Residence under Section 245A of the Immigration and Nationality Act. The director further stated that the applicant had failed to submit credible documents that could be independently verified to demonstrate his residence in the United States during the statutory period.

The director denied the applicant's I-687 application on August 27, 2007, finding 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.

On appeal, counsel states that he is appealing the director's decision because she failed to consider the evidence the applicant submitted in response to the NOID dated March 29, 2006, in rendering her decision. The applicant resubmits copies of one of his affiant's United States passport, the birth certificate of his son issued in New York, the affidavit of [REDACTED] along with his Certificate of Naturalization, the affidavit of [REDACTED] along with his Permanent Resident Card, and the affidavit of [REDACTED]

Contrary to counsel's assertions, the record of proceedings shows that the director did in fact review the evidence submitted in response to the Notice of Intent to Deny, in that she directly addressed the credibility of the statements made by [REDACTED] in his affidavit dated April 25, 2006, which was submitted by the applicant in response to the director's NOID dated March 29, 2006. Counsel fails to address the issues discussed by the director in the July 16, 2007 NOID. The applicant did not address the fraudulent nature of the mailing envelopes that he submitted as evidence, nor did he address the numerous discrepancies found by the director to be prevalent in his statements, evidence, and immigration applications he submitted to Citizenship and Immigration Services. The multiple inconsistencies left unexplained by counsel and the applicant, calls into question the applicant's residency in the United States during the statutory period. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt 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 (BIA 1988).

Here, the applicant has failed to establish, by a preponderance of the evidence, his 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 has also failed to establish that he has been continuously physically present in the United States since November 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

A review of the Notice of Intent to Deny dated July 16, 2007, and the director's decision dated August 27, 2007 reveals that the director accurately set forth a legitimate basis for denial of the Form I-687 application. On appeal, the applicant has not addressed the basis for the director's denial, nor has he presented additional evidence to overcome the director's decision. The applicant has failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The appeal must therefore be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.