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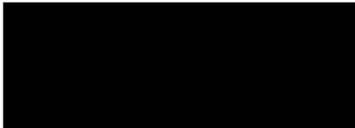
Office: Newark

Date: FEB 01 2007

IN RE: Applicant: [REDACTED]

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:



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, Newark, New Jersey, 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 July 4, 1979 and states that any inconsistencies in testimony regarding his residence were the result of miscommunication. The applicant asserts that he has submitted all available documentation to support his claim of residence in the United States.

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

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 May 3, 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] at least the date of the termination of the original legalization application period on May 4, 1988. Furthermore, the applicant failed to list any information at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States dating back to January 1, 1982, the applicant failed to list any employment prior to 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a Form I-95A, Crewman's Landing Permit, which reflected that he was granted conditional permission to land in the United States on July 4, 1979. While the Form I-95A established that the applicant landed in this country as a crewmember of the ship "MV Carbreeze" on such date, it cannot be considered as evidence of subsequent residence in the United States after July 4, 1979.

The applicant submitted an affidavit that is signed by _____ noted that he had personal knowledge that the applicant resided in the United States because they lived in the same apartment building at _____

The applicant included a letter containing the letterhead of the Bangladesh Society Inc., New York in Elmhurst, New York that is signed by the secretary of this organization _____. In his letter, _____ testified that the applicant maintained membership in this organization from 1981 through the present. Although _____ provided the applicant's most current address, he failed to include any of the applicant's addresses of residence during the entire period that the applicant was a member of this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). In addition, it must be noted that the applicant failed to provide any explanation as to why he did not list his membership in the Bangladesh Society Inc., New York at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant provided a letter containing the letterhead of the _____ Center Inc., in Brooklyn, New York that is signed by the secretary of this organization M.A. _____ provided the applicant's most current address and testified that the applicant maintained membership in this organization from 1981. While _____ provided the applicant's most current address, he failed to include any of the applicant's addresses of residence during the entire period that the applicant was a member of this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, it must be noted that the applicant failed to list membership in this organization at part #31 of the Form I-687 application. The applicant failed to put forth any explanation for the omission of this information on his Form I-687 application.

The applicant submitted an affidavit containing the letterhead of F. I. Construction Co., in Brooklyn, New York and an illegible signature. The affiant provided the applicant's most current address and stated that he first met the applicant at Jay Street and Borough Hall in Brooklyn in 1981. The affiant indicated that he maintained contact with the applicant though the present in meeting with fellow members of the Bangladeshi community and other cultural functions. However, the affiant failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant included an affidavit that is signed by _____ provided the applicant's most current address and declared that he first met the applicant in Manhattan in New York City in 1981. _____ noted that he maintained contact with the applicant though the present in meetings at the Bangladesh Muslim Center Inc., in Brooklyn, New York. However, _____ did not provide any specific and direct information, such as the applicant's address(es) of residence in

the United States, that would support the applicant's claim of residence in this country for the period in question. In addition, as noted above the applicant failed to list membership in the Bangladesh Muslim Center Inc., at part #31 of the Form I-687 application.

The applicant provided affidavits that are signed by [REDACTED] respectively. Both [REDACTED] stated that they had been living in this country since 1979 and first met the applicant at McDonald Avenue in Brooklyn, New York. Although both affiants attested to their residence in this country since 1979, neither provided any direct testimony relating to the applicant's residence in the United States since prior to January 1, 1982.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application at the CIS office in Cherry Hill, New Jersey on July 12, 2006. The notes of the interviewing officer demonstrate that the applicant testified his wife had never visited the United States and his five children had been born in Bangladesh in 1978, 1980, 1983, 1991, and 1993, respectively.

In the notice of intent to deny issued on July 12, 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 conflicts and contradictions cited above, as well as discussing the applicant's testimony that his wife had never visited this country but one of his children had been born in Bangladesh in 1983. The district director concluded that it would not be possible for the applicant to have fathered a child born in Bangladesh in 1983 if he had been residing in the United States and his wife resided in Bangladesh. 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 his child, [REDACTED] had been born in Bangladesh in 1988 rather than 1983. In support of this declaration, the applicant submitted the birth certificates of his five children including [REDACTED]. The birth certificate of [REDACTED] demonstrates that this child was born in Bangladesh on December 26, 1988. Such date corresponds to the absence listed by the applicant at part #32 of the Form I-687 application, where the applicant listed a trip to Bangladesh from February to March of 1988. Therefore, the applicant must be considered to have overcome this particular discrepancy.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on August 10, 2006.

On appeal, the applicant reiterates his claim of residence in this country since July 4, 1979 and states that any inconsistencies in testimony regarding his residence were the result of miscommunication. The applicant contends that he does not possess any additional evidence to support his claim of residence in the United States. However, the applicant failed to directly address those deficiencies and discrepancies cited above in his own testimony as well as the testimony of those individuals who provided supporting documentation. Such conflicts in testimony cannot be reasonably explained by merely stating that the deficiencies and discrepancies were attributable to miscommunication.

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. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of conflicting evidence that contradicts critical elements of the applicant's claim of residence 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.