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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-06-070-10945

Office: New York

Date: JAN 31 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]

PUBLIC COPY

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, 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 (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 reasserts that he has lived in the United States in an undocumented manner. He refers to the attached affidavits of three individuals.

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).

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).

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 temporary residence application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 9, 2005. When he was later interviewed by an officer of CIS regarding his application, he stated:

I entered in November 19, 1981 with my parents. They returned to Bangladesh six months later. I stayed with [REDACTED]. I did not attend any primary or secondary school in the United States. My parents have never returned to visit the United States since that time.

In an attempt to establish continuous unlawful residence in this country since November 19, 1981 the applicant provided a document entitled *CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations*. This partially completed document, which is not a CIS form or actual declaration, was purportedly filled out by [REDACTED]. However, when asked to explain how he knew that the applicant came to the U.S. before 1982, Mr. [REDACTED] stated: "He told me and I went to pick him and his family." When asked how he first met the applicant, he supposedly stated: "He went to pick us up." These appear to be the words of the applicant, not Mr. [REDACTED]. Mr. [REDACTED] did not state that the applicant resided with him, contradicting the applicant. He did state that the applicant entered the United States by airplane at Kennedy Airport in New York on, approximately, December 15, 1981. It is noted that on his *Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC)* dated November 8, 2005, the applicant stated that he entered the United States on November 19, 1981 without visa and inspection. He failed to explain how, if he truly arrived at Kennedy Airport, he somehow evaded inspection by an immigration officer.

The applicant also submitted another form meant to gather information for third party declarations. On this form [REDACTED] indicated that he had no evidence to show that he (Mr. [REDACTED]) lived and worked in

the United States from 1982 to 1988. It is noted that [REDACTED] on his form, had stated the same concerning his own lack of evidence.

In a notice of intent to deny the director focused on the shortcomings of this evidence, and properly pointed out that the applicant was only three years old in 1981 and would have school and inoculation records if he had truly resided in the United States from 1981 to 1988. In rebuttal the applicant simply stated that he had none of those documents to submit. The director then denied the application, based on the applicant's very implausible claim and extremely minimal, questionable documentation.

On appeal the applicant reiterates his inability "to produce any substantial evidence to support my case." He refers to attached affidavits from J [REDACTED], and I [REDACTED]. However, in each case he has provided only page four of the aforementioned form to gather information for third party declarations. Not only do these not constitute affidavits, but the information on page four was improperly provided by the applicant, rather than the three other individuals. Therefore, on appeal, the applicant has not provided any information from anyone to buttress his claim.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has not even furnished actual affidavits. The absence of sufficiently detailed supporting documentation that provides testimony to corroborate the applicant's claim of continuous residence 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 inadequate explanations 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 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.