

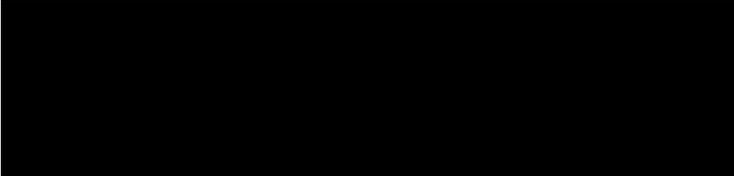
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**U.S. Citizenship
and Immigration
Services**

LI



FILE:

MSC-04-283-10469

Office: New York

Date: JUL 10 2007

IN RE:

Applicant:



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:

Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 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 he has continuously resided in the United States in an unlawful status since prior to January 1, 1982. The applicant claims that he could not submit documentation of his continuous residency in the United States during the requisite period because these documents have been lost.

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. 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.

The applicant filed a Form I-687, Application for Status as a Temporary Resident, and a CSS/Newman Class Membership Worksheet with CIS on July 9, 2004. Part 30 of this application requests the applicant to provide all of his residences in the United States since his first entry. The applicant listed his first address as [REDACTED] Brooklyn, New York, from February 1981 until October 1987. Part 33 of this application requests the applicant to provide his employment history in the United States since his entry. The applicant listed his first employment as [REDACTED] from January 1982 until June 1988. Although the applicant claims to have continuously resided in the United States since February 1981, he has failed corroborate this claim with credible documentary evidence. Moreover, documentation in the applicant’s record contains inconsistent information. On May 17, 2002, the applicant filed a Form I-485, Application for Status as a Permanent Resident, under the Legal Immigration Family Equity Act (LIFE Act). The applicant filed with this application a Form G-325A, Biographic Information Form, signed May 13, 2002. The applicant provided on this form that he resided in Dhaka, Bangladesh from February 1949 until September 1985 and his last occupation abroad was in the position of “business” from July 1973

until January 1985. These inconsistent dates draw into question whether the applicant actually resided in the United States during the requisite period. The inconsistencies detract from the overall credibility of the applicant's claim of continuous residence in the United States during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant submitted a letter from his former employer, A.P. Construction, dated April 2, 2004. This letter provides, "I, the undersigned [redacted] Manager of [redacted] do hereby declare and say that the above reference [sic] individual had been working with this Organization as a part time construction helper from January/82 through June/88. His wages was \$5.00 per hour. He was paid cash in weekend."

The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that:

Letters from employers should be on employer letterhead stationery if the employer has such stationery, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [redacted] does not meet the criteria delineated in the regulations. This letter fails to provide the applicant's address during the time period of his purported employment, January 1982 until June 1988. This letter also fails to explain whether [redacted] has personal knowledge of the applicant's employment. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), the letter should explain whether the employment information provided by [redacted] was taken from official company records or the reason employment records are unavailable. This letter fails to comply with these guidelines. Therefore, this letter can only be afforded minimal weight as credible corroborating evidence of the applicant's residence in the United States during the requisite period.

An applicant may also provide "any other relevant document" as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted numerous *copies* of notarized statements as evidence of his continuous residence in the United States during the requisite period.

The applicant submitted a statement from [REDACTED] which provides, [REDACTED] . . . is well acquainted to me since 1981 [sic] being acquainted [sic] him in a Social Function held in Brooklyn, NY.” The statement from [REDACTED] lacks significant detail. The statement fails to provide details on [REDACTED]’s first meeting with the applicant and the extent of their contact during the requisite period. This statement also fails to provide the applicant’s address or any other information regarding the applicant’s residence during the requisite period.

The applicant submitted a statement from [REDACTED] which provides, “I, [REDACTED] . . . is [sic] pleased to certify that the above named individual is well known to me since 1981 . . . I have personal knowledge about him.” The statement from [REDACTED] similarly lacks significant detail. The statement fails to provide details on [REDACTED]’s first meeting with the applicant and the extent of their contact during the requisite period. This statement also fails to provide the applicant’s address or any other information regarding the applicant’s residence during the requisite period.

The applicant submitted a statement from [REDACTED] which provides, “I, [REDACTED] . . . a Permanent Resident of United States do hereby certify that the above reference individual is well known to me since 1981.” This statement from [REDACTED] similarly lacks significant detail. This statement fails to provide details on [REDACTED]’s first meeting with the applicant and the extent of their contact during the requisite period. The statement also fails to provide information on the applicant’s address or any other information regarding the applicant’s residence during the requisite period.

The applicant submitted a statement from [REDACTED] Vice-President, Fay Chaw Merchants’ Association, Inc., which provides, “[t]his is [sic] certify that I have known the above reference[d] individual since 1980. We have always been associated on friendly terms upto [sic] the present-1986.” This letter is inconsistent with information contained in the applicant’s I-687 application, which states that the applicant has resided in the United States since February 1981. Mr. Yuen’s statement is dated September 8, 1986 and was notarized on March 29, 1993, therefore allowing [REDACTED] a reasonable period of time to amend his letter. The fact that this letter has not been amended draws into question its credibility and the credibility of the applicant’s claim of continuous residence in the United States during the requisite period.

The applicant submitted a statement from [REDACTED], which provides, “I the undersigned do hereby certify that [REDACTED] mentioned above is my intimate friend with whom I went to the Legalization Office on November 10, 1987 to file his Legalization Application with all supporting documents and fees as per law.” The statement from [REDACTED] lacks significant detail. This statement fails to provide any information regarding [REDACTED] “intimate” friendship with the applicant, such as when he first met the applicant and the extent of their contact during the requisite period. Finally, the statement does not contain [REDACTED] phone number; hence, his testimony is not verifiable.

The applicant submitted a statement from [REDACTED] which provides, "I, [REDACTED] a U.S. citizen residing at [REDACTED] Brooklyn, NY 11218 do hereby certify that [REDACTED] is well acquainted to me since 1981 as I came across him at Brooklyn, NY. He is sincere, honest and amiable." This letter lacks considerable detail in that it fails to provide any other information regarding the applicant. The statement fails to provide details on [REDACTED] first meeting with the applicant and the extent of their contact during the requisite period. This statement also fails to provide the applicant's address or any other information regarding the applicant's residence during the requisite period. Finally, the statement does not contain [REDACTED] s phone number; hence, his testimony is not verifiable.

The applicant submitted a statement from [REDACTED], which contains some detailed information on [REDACTED] s relationship and interactions with the applicant since their purported meeting in 1981. [REDACTED] s statement provides that, "I know [the applicant] from Bangladesh because he is my neighbor and my younger brother's close friend and also well wisher of mine. . . In various Social functions & under different private affairs since 1981 in New York and we visit each others room twice or thrice in a week as we live in the same Building. . . We often enjoyed movies, went on Picnic together." Although this statement provides information on [REDACTED] relationship with the applicant, it is deficient because it fails to provide [REDACTED] phone number to verify his testimony.

Due to the deficiencies in the statements submitted by the applicant, at best they can only be given minimal weight as credible corroborating evidence. The applicant has previously been given the opportunity to remedy these deficiencies, but has failed to do so. On August 12, 2005, the applicant was issued a Notice of Intent to Deny (NOID) his Form I-687 application. This notice provides:

The only evidence you have provided consists of eight (8) affidavits. Of these affidavits, at least six (6) are not credible. Affidavits submitted must be both credible and amenable to verification. The affidavit must demonstrate proof that the affiant has direct personal knowledge of events and circumstances of your residency. Credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, some proof that there was a relationship between you and the affiant such as photos, etc., and a current phone number at which the affiant may be contacted for verification . . . We also note that not one of affidavits provided is an original, they are all photocopies.

The applicant was provided thirty (30) days to submit additional evidence in response to the NOID. However, the applicant did not provide any additional evidence nor did he attempt to remedy the noted deficiencies in the written statements (a.k.a. affidavits) he had submitted as evidence. On February 6, 2006, the applicant was issued a Notice of Decision to deny his application. This notice provides, "[y]ou gave no explanation for the deficiencies in the affidavits that were addressed in the Notice of Intent to Deny. You did not provide original

affidavits.” On appeal, the applicant again fails to address the previously noted deficiencies in these written statements. The applicant, therefore, has failed to satisfy his burden of proof in these proceedings.

The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, “[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.” Both individually and within the context of the totality of the evidence, the evidence submitted by the applicant is not relevant, probative, and credible. 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 inconsistent statements on his application 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 with the Service, 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.