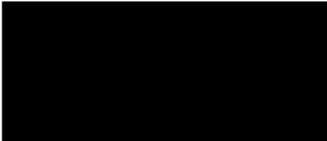




U.S. Citizenship  
and Immigration  
Services

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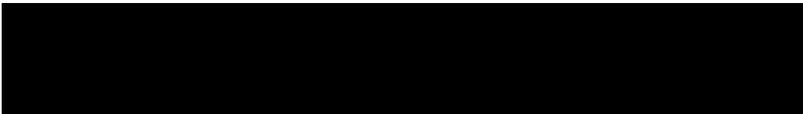
Office: New York

Date:

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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, counsel reiterates the applicant's claim of residence in this country for the requisite period and states that the applicant submitted sufficient evidence to support such claim. Counsel asserts that he made a typographical error in entering the dates of one of the applicant's absences from the United States on the Form I-687 application. Counsel submits documentation in support of the 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. *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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

An applicant for temporary resident status shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status was filed,

unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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.

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 July 12, 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] Brooklyn N.Y. 11221" from 1981 to 1989, "[redacted] Brooklyn N.Y. 11221" from 1989 to 1995, "[redacted] Brooklyn N.Y. 11221" from 1995 to 1997, and "[redacted] Brooklyn N.Y. 11216" from 1997 to July 12, 2005, the date the Form I-687 application was submitted. Furthermore, at part #32 of the Form I-687 application where applicants were asked to list all absences from this country dating back to January

1, 1982, the applicant listed a trip to Bangladesh to see family from July 1985 to August 1986. The applicant's thirteen-month absence from the United States in that period between July of 1985 and August 1986 clearly exceeded the 45-day limit for a single absence from this country during the requisite period as set forth in 8 C.F.R. § 245a.2(h)(1)f. Moreover, the applicant failed to list any employment at part #33 of the Form I-687 application where applicants were asked to list all employment dating back to January 1, 1982.

The record shows that the applicant failed to include any evidence of his residence in the United States for the period in question with his filing of his Form I-687 application on July 12, 2005.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application at CIS' District Office in New York, New York on March 1, 2006. At the time of his interview, the applicant submitted documentation in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982.

The applicant submitted an affidavit signed by [REDACTED] who stated that the applicant was a close friend since 1981 when the applicant resided at [REDACTED], in Brooklyn, New York.

The applicant included an affidavit that signed by is [REDACTED]. [REDACTED] provided the applicant's most current address of residence and indicated that he had personal knowledge that the applicant resided in the United States since 1981. Although [REDACTED] attested to the applicant's residence in this country since 1981, he 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 provided an affidavit signed by [REDACTED] who noted the applicant's most current address and declared that he had personal knowledge that the applicant resided in the United States since 1986. However, [REDACTED] failed to provide any direct and specific information to support the applicant's claim of residence in this country in that period from 1986 to May 4, 1988, the date of the termination of the original legalization application period. In addition, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to 1986.

A review of the record revealed that the applicant previously filed a Form I-485 LIFE Act application with the Service on January 18, 2002. The applicant included a Form G-325A, Biographic Information Form, with his filing of the Form I-485 LIFE Act application. Neither the Form I-485 LIFE Act application nor the Form G-325A biographic report contains any indication that these documents were prepared by anyone other than the applicant himself. On the Form G-325A biographic report, the applicant specifically acknowledged that he resided in Feni, Bangladesh from his date of birth in December 1944 to August 1985. The fact that the applicant has admitted that he resided in Bangladesh until August 1985 seriously impaired the credibility of his claim of residence in the United States from prior to January 1, 1982, as well as the credibility of any documentation submitted in support of that claim.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the notice of intent to deny issued on March 28, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by noting the applicant failed to submit sufficient evidence in support of such claim. 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, counsel submitted a statement in which he asserted that the applicant did possess primary evidence but instead had submitted affidavits and an employment letter to support his claim of residence this country for the requisite period. Counsel contended that the supporting documentation was sufficient to establish the applicant's residence in the United States since prior to January 1, 1982. Counsel included new documentation in an attempt to corroborate the applicant's claim of residence in this country for the period in question.

The applicant included a new affidavit from [REDACTED] the same individual who had signed an affidavit submitted at the time of the applicant's interview on March 1, 2006. Mr. Rahman provided the applicant's current address of residence and stated that he had personal knowledge that the applicant resided in the United States since 1986. While [REDACTED] attested to the applicant's residence in this country beginning in 1986, he failed to provide any pertinent and verifiable testimony that would tend to corroborate the applicant's residence in that period he claimed to have personal knowledge. More importantly, [REDACTED] did not testify that the applicant resided in the United States in the period from prior to January 1, 1982 up to 1986.

The applicant provided an affidavit signed by [REDACTED], who stated that she had known the applicant since 1981. [REDACTED] declared that she was the owner of the building at [REDACTED] in Brooklyn, New York and the applicant rented apartment 2 at these premises for \$275.00 per month from 1984 up to the date the affidavit was executed on March 13, 2006. However, [REDACTED] testimony regarding the applicant's address of residence since 1984 is directly contradicted by the applicant's testimony that he resided at [REDACTED] Brooklyn N.Y. 11221" from 1981 to 1989, [REDACTED] Brooklyn N.Y. 11221" from 1989 to 1995, [REDACTED] Brooklyn N.Y. 11221" from 1995 to 1997, and [REDACTED] Brooklyn N.Y. 11216" from 1997 to July 12, 2005 at part #30 of the Form I-687 application. Additionally, [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence in the United States from prior to January 1, 1982 up to 1984.

The applicant submitted an affidavit containing the letterhead of S & S Construction in South Ozone Park, New York that is signed by [REDACTED]. [REDACTED] indicated that his position with this firm was that of president and noted that the applicant had worked for this enterprise as a handyman on a part-time basis from November 1981 to January 1992. However, as previously discussed, the applicant failed to list any employment at part #33 of the Form I-687 application where applicants were asked

to list all employment dating back to January 1, 1982. The applicant failed to provide any explanation as to why he failed to list any employment at part #33 of the Form I-687 application if he had been employed as [REDACTED] claimed.

The applicant included an affidavit signed by [REDACTED] who provided the applicant's most current address of residence and indicated that he had personal knowledge that the applicant resided in the United States since 1981. Although [REDACTED] attested to the applicant's residence in this country since 1981, he 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 submitted photocopies of two envelopes both of which are postmarked January 22, 1987 and addressed to the applicant at [REDACTED] in Brooklyn, New York. However, this address did not match the address listed by the applicant, [REDACTED] Brooklyn N.Y. 11221, as his residence for that particular date at part #30 of the Form I-687 application.

The applicant included photocopies of two envelopes postmarked March 24, 1987 and May 5, 1987 respectively. Both envelopes were addressed to the applicant at [REDACTED] in Brooklyn, New York. Again, this address did not match the address listed by the applicant, [REDACTED] Brooklyn N.Y. 11221, as his residence for that particular date at part #30 of the Form I-687 application.

The applicant provided included a photocopy of an envelope postmarked September 26, 1987, which is addressed to the applicant at [REDACTED] e., in Brooklyn, New York. While this address did match an address of residence listed by the applicant at part #30 of the Form I-687 application, he specified that he resided at this address from 1989 to 1995.

The applicant failed to advance any explanation as to why he was receiving mail at various addresses throughout 1987 that were not listed as his address of residence for 1987 at part #30 of the Form I-687 application. Further, the applicant did not explain why, if this documentation had been in his possession since 1987, it had not been submitted along with his Form I-687 application, as applicants were instructed to provide qualifying evidence with their applications and the applicant did include other supporting documents with his application. Moreover, the fact that the applicant only came forth with these postmarked envelopes after having been informed in the notice of intent to deny that the evidence of residence he submitted with his Form I-687 application was not sufficient to demonstrate that he continuously resided in the United States since prior to January 1, 1982 brings into question the origin and credibility of such documents.

The district director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on May 22, 2006.

On appeal, counsel reiterates the applicant's claim of residence in this country for the requisite period and states that he submitted sufficient evidence to support such claim. Counsel asserts that he made a typographical error in entering the dates of one of the applicant's absences from the United States on

the Form I-687 application. While counsel's assertion may be sufficient to explain an error on the Form I-687 application, it cannot explain the numerous contradictions and conflicts in testimony, including the testimony of the applicant himself as well as that of the affiants who provided supporting documentation, relating to the applicant's claim of residence in this country for the requisite period.

Counsel asserts that no attempts have been made to contact the affiants that provided supporting documentation and verify their testimony. Counsel infers that the applicant could not obtain further documentation to support his claim of residence in this country because of his status as an illegal alien. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant was purportedly residing in this country as an undocumented alien, such status is insufficient to explain the contradictions and conflicts between the applicant's own testimony and the testimony contained in the applicant's supporting documents. Although the counsel notes that no attempt has been made to verify the content of testimony contained in the supporting documentation, the record reflects that two affiants [REDACTED] and [REDACTED] were contacted and neither party was able to supply any additional testimony to support the applicant's claim of residence. The applicant fails to advance any compelling reason as to why any further attempts at verification should be made in light of the minimal probative value of the applicant's evidence of residence. Moreover, the applicant himself has impaired the credibility of his claim of residence by specifically acknowledging that he resided in Bangladesh from 1944 to August 1985 on the Form G-325A biographic report.

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony 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 period in question. The applicant has negated the credibility of his claim of continuous residence in this country since prior to January 1, 1982 by providing the Form G-325A biographic report in which he admitted that he lived in Bangladesh until August 1985. 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 and his own admission that he lived in Bangladesh from December 1944 to August 1985, 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.