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U.S. Citizenship
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FILE: [Redacted]
MSC 05 329 11824

Office: NEW YORK Date:

OCT 01 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: 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 "R. 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director noted that the applicant failed to respond to a notice of intent to deny his application dated March 7, 2006, requesting that he submit additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director, therefore, denied the application for the reasons specified in the notice of intent to deny.

On appeal, the applicant claims that he never received the Notice of Intent to Deny and submits additional evidence.

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. 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 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 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 25, 2005. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] from October 1981 to September 1987 and at [REDACTED] from October 1987 to December 1994.

At his interview with a CIS officer on March 1, 2006, the applicant claimed that he first entered the United States in October 1981. He stated that he traveled from Bangladesh to Miami, Florida, by ship and entered the United States without inspection at the port of Miami, Florida. He stated that he subsequently traveled from Miami, Florida, to New York, New York by bus.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a fill-in-the-blank affidavit dated July 29, 1991, from [REDACTED] [REDACTED] stated that the applicant, who is a friend, resided at "[REDACTED] [REDACTED] from October 1981 to September 1987 and at "[REDACTED] [REDACTED]" from October 1987 to the date of the attestation. However, [REDACTED] provided no information as to how he met the applicant or the frequency of his contact with the applicant during the requisite period.

The applicant included an employment affidavit dated August 10, 2005, from [REDACTED] of [REDACTED] Restaurant located at [REDACTED]. [REDACTED] stated that the applicant worked for his restaurant as a part-time kitchen helper from November 1981 through August 1987 for a weekly gross salary of \$90 to \$150.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (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 CIS may have access to the records. The employment affidavit from [REDACTED] does not conform to this standard. [REDACTED] did not provide the applicant's addresses during the period of employment.

The applicant submitted a letter dated May 10, 2005, from [REDACTED], General Secretary of the Bangladesh Society, Inc., located at [REDACTED]. [REDACTED] stated that the applicant had been a member of society since 1983.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The letter from Mr. [REDACTED] does not conform to this standard. [REDACTED] did not provide the addresses where the applicant resided during the membership period.

The applicant included affidavits dated in May, June, and July 2005 from [REDACTED]. The wording of these three affidavits is identical with the exception of the name and address of the affiant and the date the affiant first came to the United States. All three affiants attested that they had personal knowledge the applicant first entered the United States without inspection in October 1981 and had resided continuously in the United States since that date except for the applicant's trip to Bangladesh in 1987 "to see his grave bed father. . ." However, none of the affiants provides any information as to how they met the applicant, the frequency of their contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant provided a separate affidavit dated June 16, 2005, from [REDACTED] stated:

I know the applicant for last 25 years continuously in this country. He arrived in the USA on October 1981 as an EWI by ship. Since then he lived one of my friends house until 09/1987 and then he moved to a different location of Bronx. He has worked for me during that time from 11/1981 to 08/1987. Now in these days we

meet each other very occasionally in the parties, community social gatherings, public meetings and work place.

However, [REDACTED] once again failed to provide any specific verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant submitted a fill-in-the-blank affidavit dated February 20, 2006, from [REDACTED] a resident of Bronx, New York. [REDACTED] stated that he had known the applicant since 1986, at which time the applicant was residing at "[REDACTED] Mr. [REDACTED] attested that the applicant had resided continuously in the United States since October 1981 except for a trip to Bangladesh from September 5, 1987 to October 7, 1987. However, [REDACTED] did not provide any information as to how he met the applicant or the frequency of his contact with the applicant during the requisite period. Furthermore, [REDACTED] did not explain how he could attest to the applicant's residence in the United States since October 1981 since he didn't meet the applicant until 1986. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also submitted a fill-in-the-blank affidavit dated February 20, 2006, from [REDACTED] a resident of Bronx, New York. [REDACTED] stated that he had known the applicant since 1987, at which time the applicant resided at "[REDACTED] Mr. [REDACTED] attested that the applicant "was continuously present in the United States of America from October 1981 to present." However, [REDACTED] did not provide any information as to how he met the applicant or the frequency of his contact with the applicant during the requisite period. Furthermore, [REDACTED] did not explain how he could attest to the applicant's residence in the United States since October 1981 since he didn't meet the applicant until 1987. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant included a letter dated February 21, 2006, from [REDACTED] of Seton Hall University Campus Ministry, located at [REDACTED] New Jersey." [REDACTED] stated that the applicant is a Roman Catholic by religion and a "helpful member of the Bangladeshi Catholic community." [REDACTED] further stated that the applicant worked as a cook in New York. However, [REDACTED] provided no information relating to the applicant's residence in the United States during the requisite period.

The applicant included an original airmail envelope an illegible postmark that appears to have been altered in hand by ink. Therefore, this envelope will be given no evidentiary weight.

On March 7, 2006, the district director issued a notice informing the applicant of her intent to deny his application unless he provided additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence in support of his claim. The notice was mailed to the applicant's address of record, the same address listed by the applicant on the appeal form, but was returned to CIS as unclaimed mail.

On appeal, the applicant states that he never received the notice of intent to deny. Since the notice was mailed to the correct address and returned to CIS as unclaimed mail, the applicant's failure to receive the notice is not due to any error on the part of CIS.

The applicant submits an affidavit dated April 14, 2006, from [REDACTED], a resident of [REDACTED] states that he has known the applicant since December 1981. [REDACTED] explains that he first met the applicant at Nupur Indian Restaurant when he went there for lunch. [REDACTED] attests to the applicant's continuous residence in the United States during the requisite period. However, [REDACTED] does not provide any information as to the frequency of his contact with the applicant or the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant provided a photocopied letter dated May 12, 1987, from [REDACTED] Dr. [REDACTED] stated that the applicant "visited my chamber for Acute stomach pain on April 10, 1982 and also he was seen by me on the following dates: 4-27-83, 9-20-84, 4-15-85, 11-24-86, and 5-12-87." However, [REDACTED] did not provide a photocopy of the applicant's medical records or billing statements to document the applicant's medical treatments at his office during the requisite period.

Finally, the applicant provided a photocopy of a receipt from Bell Lumber and Supply Co., Inc., in Brooklyn, New York, relating to a purchase by [REDACTED] on November 11, 1986. It is noted that the applicant's name has been written, not on the lines provided for the name and address of the customer, but rather on the line entitled "Customer's Order No." The line at the bottom of the receipt entitled "Received by" was signed by "[REDACTED]," not by the applicant. It appears that this receipt relates to a purchase actually made by "[REDACTED]" in 1986 and the applicant's name has been added after the fact so the document appears to be a contemporaneous document relating to the applicant's purchase of material in November 1986. Therefore, this document will be accorded no evidentiary weight.

In summary, the applicant has not provided any credible contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations that lack sufficient detail to corroborate the applicant's claim of continuous residence in the United States during the requisite period.

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 reliance on 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 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.