

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1

FILE: [REDACTED]
MSC-05-328-11589

Office: NEW YORK

Date: OCT 02 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]

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.

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 failed to submit credible documents constituting a preponderance of evidence as to her residence in the United States during the statutory period. The director also indicated the applicant's visit outside of the United States during the requisite period may have been sufficiently lengthy to make the applicant ineligible for temporary residence. Lastly, the director stated that the affidavits submitted by the applicant are not substantiated by other evidence in the record and are not credible.

On appeal, the applicant attempted to explain the failed attempts to confirm the information in the affidavits she submitted and explained that she departed the United States for no longer than 30 days during the requisite period.

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 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 applicant 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 applicant 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 and 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 she resided in the United States from prior to January 1, 1982 through the date she 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 Citizenship and Immigration Services (CIS) on August 24, 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 showed her only address during the requisite period to be [REDACTED] from December 1981 to April 1990.

The applicant submitted multiple affidavits and letters with her Form I-687 application. She submitted a form affidavit from [REDACTED] dated August 12, 2005. In this affidavit [REDACTED] stated that he has known the applicant since December 1981 when he met her at a birthday party with her father. This affidavit fails to confirm the applicant resided in the United States during the requisite period. The applicant submitted another form affidavit from [REDACTED] that states that the applicant resided in Los Angeles, California from December 1981 to June 1996. This affidavit provided no information regarding how the affiant is able to confirm the applicant's residence during the requisite period. It is reasonable to expect this level of detail, particularly because the affiant indicated he currently resides in New York and the applicant lived in California during the requisite period. In addition, the affiant failed to list the applicant's specific address during the requisite

period. Lastly, on the affidavit form where the affiant was asked to indicate the longest period during the residence described in which he has not seen the applicant, the affiant provided no information. As a result, this affidavit is found to be lacking in detail.

The applicant provided an affidavit from [REDACTED] dated August 14, 2005. In this affidavit, the affiant explained that he met the applicant in December 1981 in Los Angeles at her home. The affiant stated that he is a family friend of the applicant. This affidavit fails to confirm the applicant's residence during the requisite period. The applicant provided a second affidavit from [REDACTED] also dated August 14, 2005. In this affidavit, the affiant confirms the applicant resided in Los Angeles, California from December 1981 to June 1996. This affidavit provided no information regarding how the affiant is able to confirm the applicant's residence during the requisite period. It is reasonable to expect this level of detail, particularly because the affiant indicated he currently resides in New York, the applicant lived in California during the requisite period, and [REDACTED] gave no indication he lived in California at any time. In addition, the affiant failed to list the applicant's specific address during the requisite period. Lastly, on the affidavit form where the affiant was asked to indicate the longest period during the residence described in which he has not seen the applicant, the affiant provided no information. As a result, this affidavit is found to be lacking in detail.

The applicant submitted an affidavit from [REDACTED] dated August 14, 2005. In this affidavit, the affiant explained he has known the applicant since December 1981 as a cousin, and that he first met the applicant at a birthday party at her home in California. This affidavit fails to confirm the applicant's residence during the requisite period. The applicant submitted another affidavit from Mr. [REDACTED] dated August 14, 2005. This affidavit provided no information regarding how the affiant is able to confirm the applicant's residence during the requisite period. It is reasonable to expect this level of detail, particularly because the affiant indicated he currently resides in New York, the applicant lived in California during the requisite period, and [REDACTED] gave no indication he lived in California at any time. In addition, the affiant failed to list the applicant's specific address during the requisite period. Lastly, on the affidavit form where the affiant was asked to indicate the longest period during the residence described in which he has not seen the applicant, the affiant provided no information. As a result, this affidavit is found to be lacking in detail.

The applicant also submitted a CSS/Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations for [REDACTED]. In this form, [REDACTED] explained that he talked over the phone with the applicant and he went to visit the applicant's family in California a "couple of times." He also stated that he met the applicant at his home in December 1981. Lastly, he stated that he knows the applicant came to the United States before 1982 because the applicant's father told him this. This form is internally inconsistent and inconsistent with the information provided by [REDACTED] on his affidavits. Specifically, [REDACTED] stated that he first met the applicant at her home, while in the form [REDACTED] stated he first met the applicant at his home in New York. In addition, [REDACTED] stated that he met the applicant in the United States, either in New York or in California, yet he also stated in the form that he knew the applicant came to the United States prior to 1982 because the applicant's father told him this. If [REDACTED] actually met the applicant in the

United States in 1981 as he initially stated, he would have already known she was in the United States prior to 1982 and would not need the applicant's father to provide this information to him. These inconsistencies call into question [REDACTED] ability to confirm the applicant's residence in the United States during the requisite period.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted an affidavit from [REDACTED] dated December 6, 2005. The affiant stated that he has known the applicant since 1984 and can confirm her continuous presence in the United States from November 6, 1986 until the date her father tried to file for legalization, except for one innocent departure. The affiant provided no information regarding the manner in which he became acquainted with the applicant and did not list her address during the requisite period. As a result, this affidavit is found to be lacking in detail. The applicant stated in her interview with an immigration officer that [REDACTED] is a friend of her cousin, but this information was not confirmed in [REDACTED]'s affidavit.

The applicant submitted multiple affidavits from [REDACTED]. The record indicates the director contacted [REDACTED] at the telephone number he provided. [REDACTED] stated that he met the applicant in 1982 or 1983 in the community. He never went to the applicant's family's house. He saw them 12 to 15 times.

The applicant also provided an affidavit from [REDACTED] that confirms the affiant has known the applicant and her family since 1982. The affiant stated that he entered the United States in February 1982. He also stated that the applicant had entered the United States on December 18, 1981. [REDACTED] failed to explain how he is able to confirm this fact when he did not meet the applicant and her family until 1982 and he did not enter the United States until February 1982. This affidavit also fails to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations for [REDACTED]. In this affidavit, [REDACTED] explained that he met the applicant at a community gathering, where the applicant's father introduced her to him. [REDACTED] explained he knows the applicant entered the United States before 1982 because her father stated this to [REDACTED]. Where the form asks how the declarant knows the applicant was living in the United States from 1982 to May 1988, Mr. [REDACTED] explained that he and the applicant's father visited each other "every now and then." [REDACTED] also saw the applicant in community gatherings, including birthdays, religious occasions, and community stores. This form is not signed by the declarant. As a result, it holds limited evidentiary weight. In addition, this form appears to be inconsistent with [REDACTED] oral statements, in which he indicated he had never been to the applicant's family's house.

The applicant submitted another affidavit from [REDACTED] in which he stated that, to his personal knowledge, the applicant has resided in the United States in Los Angeles, California from December 1981 to June 1996. The affiant failed to list specific addresses where the applicant

resided during the requisite period. As a result, this affidavit is found to be lacking in detail. In addition, it is noted that in the prior affidavit the affiant admitted that he met the applicant in 1982, did not enter the United States until 1982, and can only confirm her residence prior to that date because of conversations with the applicant's father. The affiant has no first-hand knowledge that the applicant entered the United States prior to January 1, 1982.

This affiant also provided documentation that he was in the United States during the requisite period. Many of the affiant's documents, including his diploma and transcripts, recent driver's license, passport, and his certificate of citizenship, list the affiant's name as it appears in his affidavits: [REDACTED] In contrast, other documents including the affiant's Form I-181 Memorandum of Creation of Record of Lawful Permanent Residence, student identification card, and older driver's license, list the affiant's name as, [REDACTED] No explanation is provided for this discrepancy.

The record indicates the applicant was interviewed by an immigration officer on May 11, 2006. In her interview, the applicant stated that she entered the United States in December 1981 and only went back to Bangladesh one time during the requisite period, for two weeks on September 2, 1987.

At the interview, the applicant provided an affidavit from [REDACTED] The record indicates the director contacted [REDACTED] and he stated that he entered the United States in 1982 and was only present for six months. He stated he remembers seeing the applicant in Bangladesh at various gatherings when she was seven or eight years old. Since the applicant was born in 1977, this statement appears to conflict with the applicant's statements. Specifically, the applicant indicated she returned to Bangladesh only in the year she turned ten years old, and only for two weeks. However, the affiant indicated the applicant was in Bangladesh when she was seven or eight years old and that he saw her at multiple gatherings. This inconsistency calls into question whether the affiant can confirm the applicant's residence during the requisite period, and tends to show she was absent from the United States on more than one occasion during the requisite period. In his affidavit, [REDACTED] stated, "As far as I can remember [the applicant entered] the United States on December 18, 1981. . . . I know that [the applicant] was continuously physically present in the United States from 1981 until May 4, 1988, except for a short absence around September of 1987." This affidavit is inconsistent with [REDACTED] oral statements, which indicated that he was only in the United States for six months of 1982 and that he saw the applicant in Bangladesh when she was seven or eight years old. This inconsistency calls into question whether the affiant can actually confirm the applicant resided in the United States throughout the requisite period.

The director issued an additional Notice of Intent to Deny (NOID) on May 12, 2006. In response, the applicant provided two affidavits including one from [REDACTED] and one from [REDACTED]. These affidavits are virtually identical to each other. They each state that the affiant knows the applicant and her family very well as family friends. Each affiant stated that he was in the United States when the applicant entered the country and that the applicant and her family lived in Los Angeles from December 1981 until January 1990. Each affiant stated that he met with the applicant and her family on several occasions and met her father "all the time during Friday prayer." The

affidavits are distinctive only in the following statements: [REDACTED] affidavit states, "From our family relationship I am aware of the fact that [the applicant] was continuously in the United States from January 1982 until 1988. . . ." [REDACTED] affidavit states, "I know that [the applicant] was continuously physically in the United States from January 1, 1982 until May 4, 1988 . . ." Since the language used in these affidavits is virtually identical and neither affidavit provides specific information such as the applicant's address during the requisite period, these affidavits are found to be lacking in detail.

The applicant also submitted her signed declaration. In this declaration, the applicant questioned the director's account of her statements in the interview with the immigration officer. Specifically, she believed she had stated that she returned to Bangladesh for four weeks, as opposed to two weeks, in 1987. This clarification does not resolve the inconsistency between the applicant's statements and the statements of [REDACTED]. Specifically, even if the applicant remained in Bangladesh for one month when she was approximately ten years old, this does not explain [REDACTED] statement that he saw the applicant on multiple occasions in Bangladesh when she was seven or eight years old.

In denying the application, the director noted that the applicant may be ineligible for legalization if she was absent from the United States for longer than thirty days. An absence from the United States subsequent to May 1, 1987 of more than thirty days has the potential to interrupt an applicant's continuous physical presence. See 8 C.F.R. § 245a.2(l). The director noted attempts to contact Mr. [REDACTED] stated that he was unavailable for comment at that time, and Mr. [REDACTED] was unavailable because he was out of town. The director found that the applicant had failed to submit credible documents that would constitute a preponderance of evidence as to her residence in the United States during the statutory period.

On appeal, the applicant attempted to explain the failed attempts to confirm the information in the affidavits she submitted and explained that she departed the United States for no longer than 30 days during the requisite period. Specifically, the applicant stated that [REDACTED] indicated the CIS officer he spoke with agreed to call back in one hour, but that the officer had not called again. The applicant reaffirmed the credibility of [REDACTED] affidavit and provided his hours of availability. The applicant explained that [REDACTED] has returned to his home and is anxious to speak to a CIS officer. She also provided [REDACTED] hours of availability. The applicant also provided hours in which to contact [REDACTED]. In addition, she reiterated that she has met all the requirements for legalization, indicated the affidavits are corroborated by her testimony, and explained that affidavits alone can be used to establish presence in the United States during the requisite periods. The applicant also explained she is not sure of the exact length of her absence from the United States in 1987 but it was less than 30 days. As a result of the explanation provided by the applicant, her absence from the United States in 1987 is found not to have interrupted her continuous presence in the United States. However, this does not relate to the current issue of whether the applicant has established continuous unlawful residence in the United States throughout the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits and declarations that do not confirm she resided in the United States during the requisite period, lack sufficient detail, are internally inconsistent and inconsistent with each other, or conflict with the affiant's oral statements. Specifically, the first affidavits from [REDACTED], fail to confirm the applicant resided in the United States during the requisite period. The second affidavits from [REDACTED] and the affidavits from [REDACTED] lack sufficient detail. The form from [REDACTED] is internally inconsistent and inconsistent with [REDACTED] affidavits. The form from [REDACTED] is unsigned and appears to be inconsistent with his oral statements. The affidavit from [REDACTED] is inconsistent with his oral statements.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's supporting affidavits, and the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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.

[REDACTED]