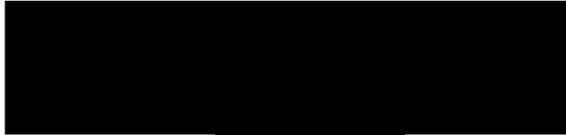


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Services**

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OCT 02 2007

FILE: [REDACTED] Office: NEW YORK Date:  
MSC 05 179 12920

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 denied the application because the applicant failed to respond to the Notice of Intent to Deny dated February 7, 2006, by providing additional evidence to corroborate his claim of continuous residence in the United States throughout the requisite period.

On appeal, the applicant reiterates his claim of continuous residence in the United States during the requisite period. He explains that he was in Bangladesh on vacation when the Notice of Intent to Deny was issued and didn't return to the United States until after the 30-day response period had already expired.

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 March 28, 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 May 1981 to December 1982, at [REDACTED] from January 1983 to June 1985, and at [REDACTED] from July 1985 to December 1995.

At his interview with a CIS officer on November 22, 2005, the applicant stated that he first entered the United States on April 27, 1981, by boat from the Bahamas at the port of Miami, Florida.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a fill-in-the-blank affidavit from [REDACTED], a resident of [REDACTED] New York. [REDACTED] stated that the applicant lived with him at [REDACTED] from May 1, 1981 to December 30, 1982. The preprinted portion of the affidavit indicates that the apartment lease, utility bills, and other household expenses were all in the affiant's name and the applicant contributed his share of the rent and other household expenses. [REDACTED] did not provide any information as to how he met the applicant.

The applicant also submitted a fill-in-the-blank affidavit from [REDACTED] a resident of [REDACTED] stated that the applicant lived with him at [REDACTED] from July 1, 1985 to December 31, 1995. The preprinted portion of the affidavit indicates that the apartment lease, utility bills, and other household expenses were all in the affiant's name and the applicant contributed his share of the rent and other household expenses. [REDACTED] did not provide any information as to how he met the applicant.

The applicant included an affidavit from [REDACTED] a resident of [REDACTED] stated that the applicant lived with him at [REDACTED] from January 1, 1983 to June 30, 1985. The preprinted portion of the affidavit indicates that the apartment lease, utility bills, and other household expenses were all in the affiant's name and the applicant contributed his share of the rent and other household expenses. [REDACTED] did not provide any information as to how he met the applicant.

The applicant provided a fill-in-the-blank affidavit dated March 7, 2005, from [REDACTED] a resident of [REDACTED] stated that he had personal knowledge that the applicant lived in Brooklyn, New York from May 1981 to the date of the attestation. [REDACTED] stated that the applicant was a construction worker and neighbor. However, [REDACTED] did not provide the applicant's street addresses in Brooklyn, New York, during the requisite period. Nor did he provide any information regarding the frequency of his contact with the applicant during the requisite period.

The applicant also included a fill-in-the-blank affidavit dated March 7, 2005, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that he had personal knowledge that the applicant resided in Brooklyn, New York from May 1981 to the date of the attestation. [REDACTED] stated that the applicant was a construction worker and neighbor. However, Mr. [REDACTED] did not provide the applicant's street addresses in Brooklyn, New York, during the requisite period. Nor did he provide any information regarding the frequency of his contact with the applicant during the requisite period.

The applicant included a fill-in-the-blank affidavit dated March 7, 2005, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] indicated that he had personal knowledge that the applicant resided in Brooklyn, New York from May 1981 to the date of the attestation. Mr. [REDACTED] indicated that the applicant was a construction worker and neighbor. However, Mr. [REDACTED] did not provide the applicant's street addresses in Brooklyn, New York, during the requisite period. Nor did he provide any information regarding the frequency of his contact with the applicant during the requisite period.

It is noted that the affidavits from [REDACTED] are identical except for the name and address of the affiant. In reviewing affidavits submitted in support of a claim of continuous residence in the United States during the requisite period, greater weight is given to affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question than fill-in-the-blank affidavits providing generic information about the

applicant. Since these three affidavits are fill-in-the-blank affidavits providing only generic information, they will be accorded little evidentiary weight.

The applicant submitted an employment affidavit from [REDACTED] located at [REDACTED]. It is noted that the name of the affiant is illegible and a printed version of the affiant's name has not been provided. The affiant stated that the applicant worked for his construction firm as a painter "since April 1<sup>st</sup>, 19887 [sic] to Feb. 1999."

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] not conform to this standard. The author of the affidavit does not provide the applicant's addresses in the United States during the period of employment for that company. Furthermore, the beginning date of employment, "April 1, 19887" appears to have been altered so it would appear that the applicant's employment began during the requisite period to establish continuous residence. This apparent alteration raises serious questions of credibility regarding the applicant's claim of employment for this company during the requisite period.

The applicant also provided an employment affidavit from [REDACTED] located at [REDACTED] stated that the applicant worked for his construction company as a painter from May 1981 to March 5, 1987. This affidavit also appears to have been altered. The original beginning year of employment, May \_\_\_\_, appears to have been eradicated and "1981" substituted. Further, the ending date of employment, March 5, 1987, also appears to have been altered. The original year appears to have been eradicated and the year "1987" substituted so it would appear that the applicant's period of employment took place during the requisite period to establish continuous residence. This apparent alteration raises serious questions of credibility regarding the applicant's claim of employment for this company during the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On February 7, 2006, the district director issued a notice informing the applicant of her intent to deny his application because he had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director specifically stated in the notice that the affidavits submitted by the applicant in support of his claim did not appear to be credible or amendable to verification. The notice was mailed to the applicant's address of record but was returned to CIS as unclaimed mail.

The district director denied the application on March 20, 2006, because the applicant failed to respond to the notice of intent to deny within the 30-day response period by submitting additional evidence to corroborate his claim of continuous residence in the United States during the requisite period.

On appeal, the applicant reiterates his claim of continuous residence in the United States during the requisite period. He states that he has no contemporaneous documents to submit to corroborate his claim because his rent and utility bills were always in the name of his roommate.

The applicant further states that he failed to respond to the notice of intent to deny within the 30-day response period because he was on vacation in his country, Bangladesh, and didn't return to the United States until after the 30-day response period had already lapsed. The applicant submitted a photocopy of a Form I-512L, Authorization for Parole of an Alien into the United States. The Form I-512L, which was issued on September 13, 2005, authorized parole of the applicant into the United States prior to September 12, 2006. An immigration stamp on the parole form indicates that the applicant was re-admitted to the United States at New York, New York, on March 18, 2006, with parole authorized until March 17, 2007. The applicant also submitted a photocopy of a Biman Bangladesh Airlines flight coupon issued on November 10, 2005, reflecting a New York/Dhaka/New York itinerary and a photocopy of a page from a Bangladeshi passport and a Form I-94, Arrival/Departure Record, indicating that the applicant was admitted to the United States at New York, New York, on March 18, 2006, with parole authorized to March 17, 2007. However, the applicant did not submit any additional evidence to corroborate his claim of continuous residence in the United States during 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 attestations that lack sufficient detail to corroborate the applicant's claim or lack credibility because they appear to have been altered.

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.