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[REDACTED]



U.S. Citizenship
and Immigration
Services

FILE: [REDACTED]
MSC 05 215 10943

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.

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 14, 2006, by submitting additional evidence to corroborate his claim of continuous residence in the United States during the requisite period.

On appeal, the applicant states that he didn't respond to the notice of intent to deny within the 30-day response period because he was in his country, Bangladesh, on a grant of advance parole when the notice was generated and mailed to him. The applicant submits photocopies of documents relating to his advance parole.

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 May 3, 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 March 1981 to August 1985 and at "[redacted]" from September 1985 to April 1991. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that he was in Bangladesh visiting his sick father from March to June 1987.

At his interview with a CIS officer on July 28, 2005, the applicant stated under oath that he first arrived in the United States by air from Bangladesh in 1981. He further stated that he was in Bangladesh visiting his sick father from March to June 1987. The applicant signed the sworn statement certifying under penalty of perjury that the information provided in his statement was true and correct to the best of his knowledge.

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 April 25, 2005, and an accompanying "form to gather further information for third party declaration" from "[redacted]" a resident of E "[redacted]" stated that the applicant lived with him at "[redacted]" from March 1981 to August 1985. The preprinted portion of

the affidavit indicates that rent receipts and household bills were in the affiant's name and "the applicant contributed toward the payment of the rent and household bills." In the accompanying "form to gather information for third party declarations," [REDACTED] indicated that he first met the applicant on October 12, 1981, at a Kentucky Fried Chicken restaurant in Brooklyn, New York. In response to the question regarding the basis of the affiant's knowledge that the applicant resided in the United States from prior to January 1, 1982 through May 4, 1988, [REDACTED] stated that he and the applicant "used to meet at shopping [sic] centre and restaurant on Sundays occasionally." [REDACTED] statement that he first met the applicant at a Kentucky Fried Chicken restaurant in October 1981 contradicts his statement in his affidavit that the applicant roomed with him in his apartment located at "[REDACTED]" from March 1981 to August 1985. Neither the applicant nor [REDACTED] has provided any explanation for this discrepancy.

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).

The applicant also submitted a "form to gather information for third party declaration" from [REDACTED] indicated that he first met the applicant on December 12, 1981, at a mosque. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country during the requisite period, to corroborate the applicant's claim

The applicant included a "form to gather information for third party declaration" from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that he first met the applicant in August 1981 at a coffee shop in Brooklyn, New York. [REDACTED] explained that he used to see the applicant from time to time at his mosque during Friday services and occasionally "at shopping places." However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim.

The applicant provided a "form to gather information for third party declaration" from [REDACTED] a resident of Brooklyn, New York. [REDACTED] indicated that he first met the applicant on June 6, 1981, at the "mosque of Bangladesh Muslim Centre" during religious services. [REDACTED] explained that he occasionally saw the applicant at services at the mosque, and on other occasions such as marriage ceremonies or birthday parties. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim.

The applicant included a fill-in-the-blank affidavit dated April 25, 2005, from [REDACTED] [REDACTED] stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since August 1981. However, [REDACTED]

failed to provide any information as to how he met the applicant, the applicant's street address in Brooklyn, New York, during the requisite period, or the frequency of his contact with the applicant during the requisite period.

The applicant submitted a fill-in-the-blank affidavit dated April 25, 2005, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] attested that he had personal knowledge the applicant had resided in Brooklyn, New York, since April 1982. However, [REDACTED] failed to provide any information as to how he met the applicant, the applicant's street addresses in Brooklyn, New York, during the requisite period, or the frequency of his contact with the applicant during the requisite period.

The applicant included a fill-in-the-blank affidavit dated April 21, 2005, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] attested that he had personal knowledge that the applicant had resided in Brooklyn, New York, since May 1987. However, [REDACTED] failed to provide any information as to how he met the applicant, the applicant's street addresses in Brooklyn, New York, during the requisite period, or the frequency of his contact with the applicant during the requisite period.

The applicant provided a fill-in-the-blank affidavit dated April 21, 2005, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] attested that he had personal knowledge that the applicant had resided in Brooklyn, New York since March 1982. However, [REDACTED] failed to provide any information as to how he met the applicant, the applicant's street addresses in Brooklyn, New York, during the requisite period, or the frequency of his contact with the applicant during the requisite period.

The applicant submitted an employment affidavit dated January 25, 1991, from [REDACTED] owner of M & N Construction located at [REDACTED] Mr. [REDACTED] stated that the applicant, who lived at [REDACTED] as of the date of the attestation, worked for his company as a construction helper from 1981 to 1985 for a salary of \$4.50 per hour.

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 whether or not the information was taken from official company records. The employment affidavit from [REDACTED] does not conform to this standard. Mr. [REDACTED] failed to provide the applicant's address(es) during his period of employment for M & N Construction.

On February 14, 2006, the district director issued a notice informing the applicant of her intention to deny his application. The district director noted that the applicant stated during his interview that he left the United States in March of 1987 and didn't return until June 1987, a period in excess of the 45 days allowed for a single absence outside the United States during the

requisite period. The district director further noted that the affidavits submitted by the applicant in support of his claim of continuous residence in the United States throughout the requisite period didn't seem to be credible or amenable to verification. The district director granted the applicant 30 days to submit additional evidence to address the issues discussed in the notice of intent to deny. The notice was mailed to the applicant's address at that time, [REDACTED] 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 by submitting evidence regarding his absence outside the United States in 1987 and additional evidence to corroborate his claim of continuous residence in the United States during the requisite period.

On appeal, the applicant states that he was unable to respond to the notice of intent to deny within the allotted 30-day response period because he was in Bangladesh on a grant of advance parole and didn't return to the United States until after the 30-day response period had lapsed. The applicant submits a photocopy of his Form I-512L, Authorization for Parole of an Alien into the United States, issued on October 5, 2005. The Form I-512L authorized the applicant to be paroled into the United States prior to October 4, 2006. The form contains an immigration stamp indicating 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 his Bangladeshi passport and a photocopy of his Form I-94, Arrival/Departure Record, indicating that he was paroled into the United States at New York, New York, on March 18, 2006, with parole authorized to March 17, 2007. However, he does not submit any evidence relating to his absence outside the United States from March to June 1987, nor does he submit any additional evidence to corroborate his claim of continuous residence in the United States throughout the requisite period.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States 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 is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

The applicant has stated that he was in Bangladesh from March to June 1987, a period of approximately three months. This absence exceeds the 45 days allotted for a single absence outside the United States.

As the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason that came unexpectedly into being." The applicant stated on the Form I-687 and during his interview that he was in Bangladesh visiting his sick father. However, he did not provide any independent evidence to corroborate his statement.

The explanation put forth by the applicant leads to a conclusion that he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. The applicant could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came unexpectedly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States throughout the requisite period.

It is noted that the applicant's wife, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on June 14, 2001, seeking to classify him as the spouse of a United States citizen. At Section C, part #16 of the Form I-130, where the alien relative is instructed to list the name, date, and place of birth of husband or wife and all children, the applicant indicated that he had a daughter, [REDACTED] born in Bangladesh on June 1, 1985, a daughter [REDACTED] born in Bangladesh on December 2, 1987, and a son [REDACTED] born in Bangladesh on August 2, 1989. The applicant claimed on the Form I-687 and in his sworn testimony on July 28, 2005, that he resided continuously in the United States from his first entry into the United States in 1981 until his absence in Bangladesh from March to June 1987. The applicant could not possibly have fathered a child in Bangladesh in 1984 if, as he now claims, he was residing continuously in the United States from 1981 to 1987. The applicant has not provided any explanation for this discrepancy in his claimed dates of residence in the United States during the requisite period. This discrepancy raises serious questions of credibility regarding the applicant's claim of continuous residence in the United States throughout the requisite period. *Matter of Ho, supra.*

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 various attestations that lack sufficient detail and verifiable information to corroborate the applicant's claim.

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 contradictions in the applicant's testimony and his 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.