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U.S. Citizenship
and Immigration
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[REDACTED]

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FILE:

MSC 05 249 13790

Office: NEWARK

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

The district director determined 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 of May 5, 1987 to May 4, 1988. Therefore, the district director determined 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, the applicant submits a statement and 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 June 6, 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 indicated that he resided at “ [REDACTED] New York” from July 1981 to June 1988. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked as a construction worker in the New York area from September 1981 to April 1984 and that he was self-employed performing an unspecified type of work also in the New York area from April 1984 to July 1988.

At his interview with a CIS officer on May 11, 2006, the applicant stated that he first entered the United States on July 6, 1981, as a crewmember on a vessel.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 24, 2002, from [REDACTED] a resident of Atlantic City, New Jersey. [REDACTED] stated that he had known the applicant since 1982 when they first met at a construction company office in New York, New York where they were interviewing for construction jobs. [REDACTED] further stated that he and the applicant became friends and have

been in regular contact by phone and in person. [REDACTED] attested to the applicant's residence in the United States since 1981 and stated, [REDACTED] further told me that during this time he worked for various construction companies and subway newspaper stands in New York before moving to Atlantic City, New Jersey." Since [REDACTED] attested that he first met the applicant in 1982, he is clearly relying on second-hand information provided to him by the applicant when he attested to the applicant's residence in the United States during the period from 1981 to 1982. He also relied on second-hand information provided to him by the applicant in stating that the applicant worked for various construction companies and subway newspaper stands in New York. Furthermore, [REDACTED] did not provide any relevant, detailed, and verifiable testimony such as the applicant's address(es) in the United States during the requisite period to corroborate the applicant's claim. The applicant subsequently provided a second affidavit from [REDACTED] however, the wording of this affidavit is identical to the wording in the affidavit signed by [REDACTED] on May 24, 2002. Therefore, the second affidavit from [REDACTED] will not be discussed separately.

The applicant also submitted an affidavit dated May 24, 2002, from [REDACTED] a resident of [REDACTED] New Jersey. [REDACTED] stated that he first met the applicant in 1971 in Bangladesh, and they have been in "continuous contact" by phone and in person since their first meeting. [REDACTED] attested that the applicant has lived continuously in the United States since 1981. [REDACTED] did not provide any information as to when and under what circumstances he first encountered the applicant in the United States. Nor did he provide any specific, detailed, and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. [REDACTED] further stated, [REDACTED] further told me that during this time he worked for various farm houses, construction companies and subway newspaper stands in New York before moving to Atlantic City, New Jersey. [REDACTED] clearly relied on second-hand information provided to him by the applicant in making this statement. Therefore, [REDACTED] testimony will be accorded little evidentiary weight.

The applicant included an affidavit dated May 24, 2002, from [REDACTED] a resident of Atlantic City, New Jersey. [REDACTED] stated that he had known the applicant since 1971 in Bangladesh, but he first encountered the applicant on August 28, 1991, at a subway newspaper stand where the applicant was working at that time. [REDACTED] attested that the applicant has lived in the United States since 1981. However, [REDACTED] failed to provide the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. Furthermore, since [REDACTED] did not encounter the applicant in the United States until 1991, he appears to be relying on second-hand information provided to him by the applicant when he attests that the applicant has lived in the United States since 1981. Therefore, [REDACTED] s affidavit will be accorded little evidentiary weight.

The applicant also included a hand-written letter dated May 8, 2006, from [REDACTED] who indicated that his medical office was located at [REDACTED] New Jersey." [REDACTED] i stated that the applicant received medical treatment at his office on March 10, 1982, April 14, 1983, and May 2, 1985.

The applicant provided an affidavit from [REDACTED] a naturalized United States citizen and resident of Ventnor City, New Jersey. [REDACTED] stated that the applicant roomed with him from August 1981 to November 1986 at the following addresses: [REDACTED] and "[REDACTED] New York." [REDACTED] further stated that the rent and household bills were all in his name and the applicant contributed toward the payment of the rent and household bills. [REDACTED] did not provide the inclusive dates of his and the applicant's residence at the two addresses listed above. Furthermore, these addresses do not correspond to the addresses listed by the applicant on the Form I-687. The applicant indicated on the Form I-687 that he resided at [REDACTED] New York, not Holliswood, New York, as indicated by [REDACTED] from July 1981 to June 1988. The applicant did not list the Long Island City address on the Form I-687 at all. The applicant has not provided any explanation for these discrepancies in his claimed dates and addresses of residence during the requisite period.

It is noted that [REDACTED] accompanied the applicant to his legalization interview. The CIS officer who conducted the applicant's interview asked [REDACTED] about his relationship with the applicant. [REDACTED] stated that he first met the applicant in the spring of 1981. This statement contradicts the applicant's statement that he first entered the United States in July 1981. [REDACTED] could not have met the applicant in the spring of 1981 if the applicant, by his own testimony, did not enter the United States for the first time until July 1981. The applicant has not provided any explanation in this discrepancy in his claimed date of entry into the United States.

Furthermore, the record contains a photocopy of [REDACTED]'s expired Egyptian passport [REDACTED]. Page 8 of this passport contains a United States nonimmigrant B-2 visitor's visa issued in Cairo, Egypt, on August 20, 1981. The facing page contains a United States immigration stamp indicating that [REDACTED] was admitted to the United States at New York, New York, as a nonimmigrant B-2 visitor on February 27, 1982 and again on May 31, 1988. Page 10 of the same passport contains another United States nonimmigrant B-1/B-2 visitor's visa issued in Cairo, Egypt, on February 15, 1983. The same page bears a United States immigration stamp indicating that the applicant was admitted to the United States on July 26, 1983, at New York, New York. Page 15 of the same passport contains a United States immigration stamp and a written notation by an immigration inspector indicating that the applicant was admitted to the United States on October 25, 1985, as an immigrant under the IR-1 category, spouse of a United States citizen. Since [REDACTED] obviously traveled back and forth between Egypt and the United States in the period between 1982 and 1988, he could not have roomed with the applicant during the six-year period from August 1981 to November 1986 as he stated in his affidavit. In fact, [REDACTED]'s nonimmigrant B-2 visa was not even issued to him until August 20, 1981, when he claims to have been rooming with the applicant in the United States. These contradictions raise serious questions of credibility regarding [REDACTED] testimony in his affidavit.

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 appeal the applicant states that he may have confused some dates relating to his residence in the United States because "the case is so long." The applicant submits copies of documents previously submitted in an attempt to corroborate his claim of continuous residence in the United States during the requisite period. He also submits an affidavit from [REDACTED] a resident of Atlantic City, New Jersey. [REDACTED] states that he has personally known the applicant since 1986. He attests to the applicant's residence in the United States since 1981. Since [REDACTED] stated that he met the applicant in 1986, he is clearly relying on second-hand information provided to him by the applicant when he attests that the applicant has resided in the United States since 1981. Furthermore, [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses 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 from only five people concerning that period, all of which lack sufficient verifiable and detailed testimony to corroborate the applicant's claim or contain statements that contradict the applicant's statements on the Form I-687.

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 between the applicant's statements on the Form I-687 and the testimony of affiant [REDACTED] and his reliance upon 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.