



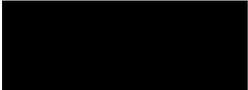
U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



Li

FILE:  Office: New York
MSC 05 201 16181

Date: SEP 13 2007

IN RE: Applicant: 

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates his claim of residence in the United States since prior to January 1, 1982 and asserts that he has submitted sufficient evidence in support of such claim.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687 application on September 3, 1993. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] Fl., in Elmhurst, New York from December 1981 to December 1985 and [REDACTED] in Woodside, New York from January 1986 to December 1991. In addition, at part #34 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any affiliations or associations. Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he worked at odd jobs in New York from January 1982 to December 1984 and as a helper at [REDACTED] in Brooklyn, New York from July 1985 to February 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] provided a listing of the applicant's addresses of residence from December 1981 through the date the affidavit was executed on January 29, 1993 that corresponded to the applicant's listing of his addresses of residence as stated in the paragraph above.

The applicant provided an affidavit signed by [REDACTED] who declared that the applicant had lived with him at those addresses of residence listed by the applicant at part #33 of the Form I-687 application as cited above.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] noted that the applicant was his school age friend who had been living in the United States but returned to Bangladesh to see his younger brother who had undergone surgery in August 1987. [REDACTED] stated that the applicant returned to the United States after caring for his brother in September 1987. However, [REDACTED] failed to provide any direct and verifiable testimony that tends to corroborate the applicant's claim of residence in this country for the requisite period.

The applicant submitted an employment affidavit that is signed by [REDACTED] manager of the 6102 Convenience Corp., in Brooklyn, New York. [REDACTED] stated that the applicant had worked for this enterprise as a helper from July 1985 to February 1989. However, [REDACTED] failed to provide the applicant's address of residence in that period he was employed by 6102 Convenience Corp., from July 1985 through at least the date of the termination of the original legalization application period on May 4, 1988 as required under 8 C.F.R. § 245a.2(d)(3)(v).

The record shows that the applicant submitted another separate Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 19, 2005. When asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., at part #31 of this new Form I-687 application, the applicant once again failed to list any affiliations or associations. When asked to list all employment in the United States dating back to January 1, 1982 at part #33 of the new Form I-687 application, the applicant listed "Self

employed as a door to door daily basis labor" from February 1982 to the date the new Form I-687 was filed on April 19, 2005. However the applicant failed to provide any explanation as to why his employment as a helper at [REDACTED] New York from July 1985 to February 1989 was listed on the Form I-687 application filed on September 3, 1993, but was not listed on the new Form I-687 application that was subsequently filed on April 19, 2005.

In support of his claim of continuous unlawful residence in this country since prior to January 1, 1982, the applicant included copies of previously submitted documentation as well as new evidence. The applicant provided an unsigned but notarized employment letter that is attributed to [REDACTED] manager of Simone, an espresso and wine bar in New York, New York. This letter indicated that the applicant had been employed as busboy at this establishment from March 1982 to December 1988. However, the applicant failed to put forth any explanation as to why his employment as a busboy at Simone from March 1982 to December 1988 was not listed on either the Form I-687 application filed on September 3, 1993 or the separate Form I-687 application filed on April 19, 2005. Further, the letter failed to state the applicant's address of residence in that period he was employed by this establishment from March 1982 through at least the date of the termination of the original legalization application period on May 4, 1988 as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the credibility of the letter and the testimony contained therein is seriously undermined by the fact that the letter has been notarized without any signature being affixed to the letter.

The applicant submitted an affidavit signed by [REDACTED] who stated that he was a close friend of the applicant since he and the applicant first became acquainted in Brooklyn, New York in 1981. [REDACTED] noted that he had accompanied the applicant to a Service legalization office when he unsuccessfully attempted to apply for legalization on October 14, 1987. However, [REDACTED] did not provide any direct and verifiable testimony, such as the applicant's address(es) of residence in the United States since 1981, that would corroborate the applicant's claim of residence in this country for the period in question.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] declared that the applicant has been well known to her since 1981 and she had personal knowledge that he was continuously physically present in the United States since prior to January 1, 1982 except for a short absence. [REDACTED] indicated that the applicant went to a Service office to apply for legalization in the original application period between May 5, 1987 and May 4, 1988 but was told that he was not eligible because he had traveled outside the United States. Nevertheless, [REDACTED] did not provide any specific and direct information that would support the applicant's claim of residence in this country for the requisite period.

The applicant provided an affidavit signed by [REDACTED] who testified that the applicant lived with him as a tenant paying a proportionate share of rent and utilities at [REDACTED] in New York, New York from December 1981 to July 1987. However, Mr. [REDACTED]'s testimony regarding the applicant's address of residence in this period is directly contradicted by the applicant's own testimony that he resided at [REDACTED], in

Elmhurst, New York from December 1981 to December 1985 and [REDACTED], in Woodside, New York from January 1986 to December 1991 on both of the Form I-687 applications contained in the record. [REDACTED] testimony regarding the applicant's address of residence in this period also contradicted the testimony of [REDACTED] and [REDACTED] both of whom provided affidavits in support of the applicant's claim of residence for the period in question.

The applicant submitted an affidavit containing the letterhead of the [REDACTED] New York in Elmhurst, New York that is signed by [REDACTED]. In this affidavit, Mr. Martin stated that the applicant was a member of this organization since 1982 and that he had personal knowledge that the applicant resided in the United States since prior to January 1, 1982. [REDACTED] attested that the applicant had been absent from this country for a short time and that this was reason the applicant was told that he was not eligible for legalization. However, Mr. [REDACTED] neither listed his position with this organization nor included any of the applicant's addresses of residence during the entire period that the applicant was a member of this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). In addition, it must be noted that the applicant failed to provide any explanation as to why he did not list his membership in the Bangladesh Society Inc., New York in each of the respective parts of the two Form I-687 applications he submitted where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant included another separate affidavit that is also signed by [REDACTED] but contained the letterhead of the Greater Comilla Association, U.S.A., in Brooklyn, New York. In this affidavit, [REDACTED] listed his position with this organization as president and noted that the applicant was a member of this organization since 1982 and that he had personal knowledge that the applicant resided in the United States since prior to January 1, 1982. [REDACTED] affirmed that the applicant had been absent from this country for a short time and that this was reason the applicant was told that he was not eligible for legalization. However, [REDACTED] again failed to list any of the applicant's addresses of residence during the entire period that the applicant was a member of the Greater Comilla Association, U.S.A., as required under 8 C.F.R. § 245a.2(d)(3)(v). Further, it must be noted that the applicant again failed to provide any explanation as to why he did not list his membership in the Greater Comilla Association, U.S.A., in each of the respective parts of the two Form I-687 applications he submitted where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant provided an employment affidavit containing the letterhead of [REDACTED] in Long Island City, New York that is signed by [REDACTED]. [REDACTED] listed his position with this enterprise as proprietor. [REDACTED] declared that the applicant had been well known to him since 1981 and that he sometimes employed the applicant in an unspecified position. [REDACTED] noted that the applicant had been absent from this country for a short time and that this was reason the applicant was told that he was not eligible for legalization when he attempted to file an application with the Service. Nevertheless, [REDACTED] did not provide

the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required by 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, the applicant failed to put forth any explanation as to why his employment for [REDACTED], proprietor of [REDACTED] City, New York, was not listed on either the Form I-687 application filed on September 3, 1993 or the separate Form I-687 application filed on April 19, 2005.

The applicant submitted an affidavit containing the letterhead of [REDACTED] Inc., in Brooklyn, New York that is signed by [REDACTED] who listed his position with this company as director. [REDACTED] indicated that the applicant was well known to him since the applicant first entered the United States without legal papers in May 1981 and that he resided in this country since such date except for one casual absence. [REDACTED] noted that the applicant made every attempt to apply for legalization in the original application period between May 5, 1987 and May 4, 1988 but was told that he was not eligible to apply because he had traveled outside the United States. However, [REDACTED] testimony that the applicant first entered the United States in May of 1981 conflicted with the applicant's testimony relating to the date he first entered this country as the applicant failed to claim any residence in this country prior to December 1981 on either of the two Form I-687 applications he has submitted. Additionally, [REDACTED] failed to provide any direct and verifiable testimony, such as the applicant's addresses of residence, to support the applicant's claim of residence in this country for the requisite period.

The applicant included an affidavit signed by Nesar Ahmed who stated that he had known the applicant since January 1982 and had knowledge that the applicant continuously resided in the United States since prior to January 1, 1982 except for a brief absence. [REDACTED] affirmed that the applicant attempted to apply for legalization in the original application period between May 5, 1987 and May 4, 1988 but was told that he was not eligible because of his brief absence from this country.

On February 14, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he reiterated his claim of residence in the United States since prior to January 1, 1982 and asserted that the affidavits he had submitted in support of such claim were sufficient evidence to establish his residence in this country for the period in question.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on March 15, 2006.

On appeal, the applicant reaffirms his claim of residence in the United States since prior to January 1, 1982 and asserts that he has submitted sufficient evidence in support of such claim. However, the applicant fails to advance any reasonable explanation for the contradictions, conflicts, and omissions in the applicant's own testimony as well as that testimony contained in the supporting documents as it pertains to critical elements of his claim of residence in this country for the requisite period such as his addresses of residence or employment history.

The absence of sufficient credible supporting documentation and the existence of contradictory and conflicting testimony seriously detract from the credibility of the applicant's claim of residence in this country for the period in question. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's failure to provide credible evidence to corroborate his claim of residence, 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 as required under section 245A(a)(2) of the Act. 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.