

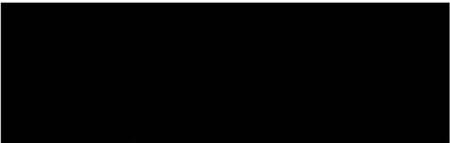
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] MSC-04-311-11117

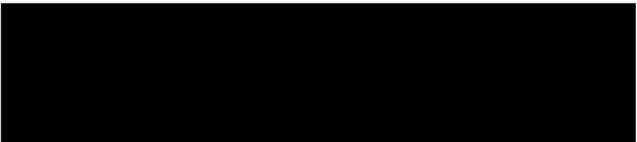
Office: New York

Date: APR 02 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) dated August 26, 2005. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submitted additional evidence.

According to the Form I-687, the applicant stated that he first entered the United States on March 12, 1981.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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.* at 80. 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, 431 (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 meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 5, 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 his first address in the United States to be at [REDACTED] Brooklyn, New York from March 1981 to December 1993. Similarly, at part #33, he showed his first employment in the United States to be “Self” at various places in New York as a construction helper from April 1981 to July 1981. Thereafter, the applicant stated that he was employed as a kitchen helper by Mitali Indian Food Restaurant-Sufian located at [REDACTED] New York from August 1981 to February 1983.

The applicant submitted the following relevant documentation: a form affidavit made by [REDACTED] on July 13, 2004 and an undated form statement; a copy of an envelope addressed to the applicant with the postage illegible and postal cancellation markings partially legible; and statements submitted by [REDACTED]

Of all the statements and affidavits submitted by the applicant¹ only four statements from declarants [REDACTED] presented stated that the applicant was in the United States prior to January 1, 1982, and in continuous residence in the United States in an unlawful status since such date and through the date the application is filed. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant submitted the following evidence in support of the application:

- A form affidavit made February 13, 1992, by [REDACTED] stated that the applicant resided at [REDACTED] New York from March 1981 to present (i.e. February 13, 1992) and he knew this because he was a neighbor. He stated that he did not see the applicant between the dates October 5, 1987 to October 29, 1987. There is no explanation how or why the declarant would know the exact day, month and year of the applicant's absence and return to the United States when he gave his affidavit five years later. [REDACTED] fails to say how he knew or was aware that the applicant traveled outside the United States without advance parole and returned and reentered without any legal papers or whether the applicant traveled at other times. Reasonably it would not have been in the applicant's interest to make his unlawful travel visit known.
- According to an undated form statement given by [REDACTED], while he was chef at the Mitali Restaurant located at [REDACTED], New York, New York, the applicant came to his residence for work in 1981. According to the declarant, the applicant worked in the restaurant on a part-time basis for one and a half years. The declarant was requested to submit photographs taken with the applicant between 1982 and 1988, but the declarant stated he had none. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part, that prior employment may be demonstrated by pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, or letters from the employer. No such evidence was submitted by the applicant to prove by independent objective evidence of his employment at the Mitali Restaurant.
- According to a sworn affidavit made by [REDACTED] on the applicant's behalf, he knew the applicant for 23 years and that the applicant used to live at [REDACTED]

¹ Since the statements submitted by [REDACTED] and [REDACTED] do not provide evidence concerning the issue of the applicant's presence in the United States prior to January 1, 1982, they will not be discussed further.

Brooklyn, New York. He stated that the applicant submitted an application to INS in "April '88" and the applicant "was trying to make himself legal on the ground [sic] of 'CSS' amnesty back in 1993."

- According to an undated form statement given by Md. [REDACTED] of Brooklyn, New York, he first met the applicant in December 1981 in New York as "We used to offer prayer at the same mosque." However, the applicant has submitted a statement from the Islamic Council [REDACTED] New York, New York, that stated that the applicant "has been attending the Jum'aa Prayer and other Islamic holidays at this [REDACTED] since 1982." Therefore there is an inconsistency between when the applicant attended the mosque activities in 1982 and when Md. [REDACTED] stated the applicant was there in 1981. Furthermore, in the same unsigned statement Md. [REDACTED] contradicted his own statement concerning when he was in the United States and when he could have seen the applicant. He goes on to state in that same form that when the applicant came to the United States he was working at that time in Bangladesh, and learned that the applicant reputedly came to the United States before 1982 "from his family." Therefore, Md. [REDACTED] is not stating what information he learned personally from direct observation but only what he was told by others. As such, Md. [REDACTED] for the reasons stated, has not submitted relevant, probative, and credible evidence to support the applicant's claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982
- According to a form "Affidavit of Residence" given by Mr. [REDACTED] of Brooklyn, New York, made February 16, 1993, the applicant lived with him from March 1981 to present (i.e. February 16, 1993). He stated in the affidavit that the rent and household expenses were in his name and that "the applicant contributes toward the payment of the rent and household bills." [REDACTED] statement that he resides at [REDACTED], Brooklyn, New York with the applicant is not substantiated by any corroborative evidence. The applicant has stated that he resided at that address.

The director issued a NOID to the applicant on August 26, 2005, and requested additional information concerning the applicant's first entry into the United States and evidence of his residency from March of 1981 until May 4, 1988.

In response, [REDACTED] a prior counsel for the applicant submitted a letter stating that "New affidavits with more details can be given" but none were received.

The director denied the application for temporary residence on August 8, 2006. In denying the application, the director found that evidence presented of his residency from March of 1981 until May 4, 1988, in the United States was insufficient as discussed above. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that the evidence submitted to support his application and submitted upon appeal demonstrates that the applicant was in the United States during 1981-1988.

On appeal the applicant submitted an affidavit from [REDACTED] of Brooklyn, New York made August 24, 2006, an affidavit from Mr. [REDACTED] made August 25, 2006, two undated color photographs of three declarant's who have provide statements in support of the applicant's application, and a copy of an envelope addressed to the applicant with the postage illegible and postal cancellation markings partially legible.

On appeal, the applicant has also re-submitted a statement from the Islamic Council of America Inc., Madina Masjid, New York, New York, that stated that the applicant "has been attending the Jum'aa Prayer and other Islamic holidays at this 'Madina Mosque' since 1982." However, the applicant has submitted a Form I-687 that stated in part #34 that he was a member of "Madina Masjid, Manhattan, New York from 1981 to present (i.e. August 4, 2009 [sic]). Since the applicant's sworn statement in the Form I-687 has been contradicted by the statement by Julkifl Choudhury of the Islamic Council of America Inc., Madina Masjid, of the applicant's membership as presented here, we cannot rely on the beneficiary's statement that he was a member of Madina Mosque in 1981 to be credible.

We also note that [REDACTED] affidavit made August 25, 2006 stated that he met the applicant in his restaurant "at 1981 in my restaurant [REDACTED]. I also met him every Friday 11ST Madina Masjid." Since [REDACTED] statement stated that the applicant's mosque membership commenced in 1982, [REDACTED]'s affidavit's is contradicted in pertinent part. Further, in an undated form statement made by [REDACTED] in the record he stated that he first met the applicant in Brooklyn at his friend's house and that he knew that the applicant came to the United States before 1982 because "I visited hime [sic] before 01/1982 for sure." Based upon the above inconsistencies, [REDACTED] statements are not probative and credible evidence to the applicant's presence in the United States prior to January 1, 1982.

The director denied the application for temporary residence on August 8, 2006. In denying the application, the director found that the applicant had not established by a preponderance of evidence that the applicant resided continuously in unlawful status in the United States before January 1, 1982 and through the requisite period. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

There are inconsistencies in information, affidavits and statements provided by the applicant such that the AAO is unable to determine the truth in the matter. The evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States for the requisite period. The record lacks sufficient evidence that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period. The affidavits and statements submitted are not corroborated by other evidence in the record despite the applicant's statement that he has been an unlawful resident in the United States since March 12, 1981. See 8 C.F.R. § 245a.(d)(3)(vi). In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for inconsistent assertions found in the statements and affidavits noted above.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.