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FILE: [Redacted]
MSC 04 269 10041

Office: NEW YORK

Date: **APR 15**

IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or 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.

Robert P. Wieman, 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. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status.

On appeal, the applicant addressed some discrepancies in the evidence noted previously by the director.

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 was 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 confirm 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 resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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 is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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 applicant 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 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.

The regulation at 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.

The applicant submitted the instant Form I-687 application on June 25, 2004. On the application the applicant stated that he lived at [REDACTED] in New York City from May 1981 to October 1987. The applicant indicated that he began living on the second floor of [REDACTED] in Elmhurst, New York beginning during November of 1987, but did not state when he moved from that address. He also stated that his present address, as of June 25, 2004, was [REDACTED] in Brooklyn, New York, but did not state when he moved to that address.

The applicant also gave the following employment history on that application. The applicant stated that he worked as a painter from June 1981 to August 1983 for Hanif Paint & Décor, in Brooklyn, New York; as a construction laborer from September 1983 to December 1988 for Islam Construction Incorporated, also in Brooklyn, New York; and as a construction painter from January 1989 to August 1998 for Hashem Contracting Corporation in Brooklyn, New York.

The record contains

- other form affidavits from [REDACTED] and [REDACTED]

- undated form declarations from [REDACTED] and [REDACTED]
- a form Affidavit of Residence from [REDACTED] dated February 1, 1991,
- employment verification letters,
- a letter dated November 18, 1987 from a medical doctor,
- a receipt dated August 17, 1982 and written to [REDACTED],” indicating purchase of a futon and frame from A&A Brooklyn Bedding Corp. of 511 5th Avenue in Brooklyn, New York,
- an envelope postmarked October 22, 1987 and addressed to the applicant at his [REDACTED] address,
- a letter dated November 21, 1990 from the Bangladeshi consulate in New York City,
- a July 14, 2006 letter from the vice president of the Islamic Council of America Incorporated,
- a letter from the applicant dated July 18, 2006, and
- a previous Form I-687 signed by the applicant on August 23, 1991,

The record contains no other evidence pertinent to the applicant’s continuous residence in the United States during the salient period.

The form affidavit from [REDACTED] is dated January 7, 1991 and states that the applicant lived at [REDACTED] in New York City from May 1981 to “Present” (January 7, 1991). The affiant also gave his own address as [REDACTED] in New York City and stated that he was able to determine the beginning date of his acquaintance with the applicant because, “We resided in the same building.”

That affidavit was not accompanied by the affiant’s telephone number, by any identification, or by any indication that the affiant was in the United States during the period when he alleged he knew the applicant there. More importantly, the residential history provided by [REDACTED] conflicts with the applicant’s own version of his residential history. The applicant indicated that he left his [REDACTED] address during October of 1987, whereas [REDACTED] indicated that the applicant continued to live there at least through January 7, 1991.

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, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to

explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The form affidavits of [REDACTED] and [REDACTED] were all attested to by notary [REDACTED] with identification number [REDACTED], and all contain the following preprinted information,

. . . [the applicant] was continuously present in the United States of America from 01/01/82 till 5/4/88. We are very good friends.

. . . He traveled to his country in 10/06/86 to 10/21/87 (1986), (1987), (1988) on a short trip.

. . . I know that he was in the United States of America in **1986, 1987, and 1988**.

[Emphasis in the original for reasons unknown to this office.]

Obviously, those three nearly identical affidavits were the product of common authorship, and their contents were not, therefore, dictated by the three affiants. This office finds identical affidavits prepared in advance for affiants' signatures to be less compelling evidence than statements made by the affiants themselves.

The form affidavit of [REDACTED] is dated July 18, 2006. It states that the affiant first met the applicant during July 1981 at B&H General Contracting Corporation at 564 Lafayette Avenue, in Brooklyn, New York, where the applicant then worked. This office notes that the applicant stated, on his Form I-687, that during July 1981 he worked for Hanif Paint & Décor, at "3 Avenue C," in Brooklyn, New York, rather than at B&H General Contracting.

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, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

That the information on [REDACTED]'s form affidavit conflicts with the applicant's own history of his employment detracts from the credibility of the affidavit itself, and also detracts from the credibility of all of the other evidence in the file.

The affidavits of [REDACTED] and [REDACTED] state that they first met the applicant during September 1981 and November 1982, respectively, and that the applicant was continuously present in the United States from January 1, 1982 until May 4, 1988 with the exception of the short trip during October 1987.

The form declaration of [REDACTED] states that he met the applicant during December 1981, or approximately then, when the applicant visited a friend who lived at the declarant's address. Section 11 of that form declaration requested the addresses at which the declarant lived from January 1982 to May 1988. Three spaces were provided for the declarant to list the complete addresses at which he had lived. The declarant responded, "New York."

Section 12 of that declaration requested that the declarant state "[w]here [he] was working between January 1982 and May 1988 ([G]ive names of employers, addresses and dates[.])" Three spaces were provided for the declarant to provide the names of his employers, the dates of his employment, and the employers' addresses. The declarant responded, "New York."

Section 13 of that declaration asked if the declarant had any proof that he was in the United States between 1982 and 1988. The declarant responded that he did not.

Item 14 of the application asks,

Between 1982 and May 1988 how do you know the applicant was living in the US – describe all of your contacts with the applicants [sic] between 1982 and 1988. Did you visit or spend time with the applicant during 1982-88, and if yes, what did you do together, how often did you see each other (be as detailed as possible. Provide examples of birthdays, funerals, marriages or any other special times you were together. Describe as many things as possible that you can remember that you did together)[.]¹

In response the applicant stated,

Whenever he came to visit his friend [REDACTED] I met him. Specially on our religious festives or any kind of help or any suggestions regarding immigrational matters.

[Errors in the original.]

Section 15 of that declaration asked if the declarant had any photographs of himself and the applicant taken between 1982 and 1988. The declarant responded that he did not.

Asked at Section 16 when he entered the United States the declarant responded, "Before 1982." The declarant did not reveal, in response to a direct question, how he entered the United States. Asked what kind of lawful status he acquired and when he acquired it, the declarant responded "Citizen," but did not provide the date he allegedly acquired citizenship. The declarant did not respond to a question that directly asked, "When did you become a US citizen (if you ever did)[?]" Finally, the declarant did not sign that affidavit.

¹ That same paragraph is present on all of the form declarations.

The declarations of [REDACTED]

[REDACTED] and [REDACTED] all indicate that they have no evidence that they were in the United States during the salient period and no photographs of themselves with the applicant during that period. The third page of the declaration of [REDACTED] which contains question 13, is missing, but the declarant indicated that he has no photographs of himself and the application during the salient period. Further, the declarations of [REDACTED] and [REDACTED] are unsigned. Finally, verification of the information in those affidavits is rendered very difficult by the fact that they do not include the phone numbers of the declarants.

The declaration of [REDACTED] provided no employment information other than, "None--Odd Jobs." In answer to the request at Item 14 for the most detailed possible description of his interactions with the applicant during the salient period, the declarant stated,

We know each other from my country, Bangladesh. For this we always meet every week ends and discuss about everything.

[Errors in the original.]

In his declaration, [REDACTED] indicated that he met the applicant during 1981 at their mosque. As with the declaration of [REDACTED] the declarant did not reveal his addresses during the salient period except to state, "New York." In response to the inquiry about his employment during the salient period the declarant stated, "Odd Jobs." In response to the request for the most detailed possible narrative of his association with the applicant, including special events, the declarant stated,

He is a friend of mine. We went to do shopping, we did grocery together and we visit together other friends houses too.

[Errors in the original.]

In his declaration, [REDACTED] stated that he was living in Bangladesh when the applicant entered the United States, and that he knew the applicant had reached the United States because the applicant contacted his family in Bangladesh, and they relayed the news. He further stated that he first met the applicant in August of 1981, or approximately then, in New York, when they lived at the same address. The declarant stated that he entered the United States during August of 1981 and that he is a CSS/Newman class member.² This office notes that these assertions are consistent with the applicant's claim on the Form I-687 application and the December 4, 1992 Form for

² An arguable discrepancy exists between the declarant's assertion that he first met the applicant in August 1981 in New York and the implication that he knew him previously in Bangladesh. This office believes, however, that the declarant intended to state that August 1981 was the first time he met the applicant within the United States.

Determination of Class Membership that he entered the United States in May 1981 and began working in the United States during June 1981.

However, [REDACTED] also stated that he continued living and working in Bangladesh from January 1982 to May 1988. This is inconsistent with the declarant's implied statement that, having entered the United States during August 1981, he remained in the United States during the requisite period and is now a CSS/Newman class member.

Again, any inconsistency in the evidence, unless reconciled with objective evidence, diminishes the evidentiary value of all of the evidence submitted and of the applicant's assertions.

In his declaration [REDACTED] stated that he met the applicant during 1981. Asked, at Item 9, "How do you know that the applicant came to the US before 1982[?]," he responded, "We resided in the same place at that time." Asked at item 14, for the most detailed possible description of his interactions with the applicant during the salient period, the declarant stated,

As because we lived in the same place, we shared our everthing that time. Still we meet each other whenever we make time. He respects me a lot as because I am senior to him.

[Errors in the original.]

In their declarations [REDACTED] and [REDACTED] state that they are the applicant's brothers, and that they know the applicant entered the United States before 1982 because he called home and told his family during 1981 that he had entered. Neither declarant claims ever to haven entered the United States.

In his declaration [REDACTED] stated that he knew the applicant in Bangladesh and that the applicant's uncle, whom the declarant did not name, told the declarant that during 1981 the applicant entered the United States at Buffalo, New York by car. The declarant further stated that he, himself, lived and worked in Bangladesh from January 1982 to May 1988. Although, in response to a direct question at item 16, the declarant did not reveal when he entered the United States, he stated that he is a citizen.

In his declaration [REDACTED] stated that he met the applicant at a mosque in Brooklyn, New York during 1984. He further stated that he knows the applicant was present in the United States before 1982 because the applicant told him so. Asked to list his residences and employers between January 1982 and May 1988, the declarant responded, "New York." In response to the request for the most detailed possible narrative of his association with the applicant, including special events, the declarant stated,

He used to see me whenever he gets time. Specially, he is like my younger brother to me. Still, today he visits me with a bunch of friends on every religious festives.

[Errors in the original.]

In his declaration, [REDACTED] stated that he met the applicant during 1981 in Bangladesh before the applicant left for the United States. The declarant did not claim to be in the United States during the requisite period.

In his declaration, [REDACTED] stated that he met the applicant at a mosque in New York during 1982, and that an unnamed friend of the applicant told the declarant that the applicant had entered the United States prior to 1982. When asked to provide the complete addresses of all of the places he had lived in the United States during the requisite period, the declarant stated, "New York." When asked to identify all of his employers during that period, their addresses, and the terms of his employment, he stated, "None/Odd Jobs Various Places at New York." In response to the request for the most detailed possible narrative of his association with the applicant, including special events, the declarant stated, "We met each other specially on our religious festives and we sharer our feelings about parents." [Errors in the original.]

In his declaration, [REDACTED] stated that he was still living in Bangladesh when the applicant entered the United States, but knows it was before 1982 because he learned about it from the applicant's family. He states that he first entered the United States during 1984, and first met the applicant during 1984 in New York, when they resided at the same address. In response to the request for the most detailed possible narrative of his association with the applicant, including special events, the declarant stated, "We resided at the same place and for this we shared almost everything – holiday, religious festives, birth days, shopping, cooking, doing grocery etc." [Errors in the original.]

This declaration appears to conflict, however, with the previous affidavit from [REDACTED], described above. In his January 7, 1991 form affidavit, [REDACTED] stated that indicated that he knew the applicant had lived at [REDACTED] beginning in May 1981 because he resided in the same building, clearly implying that he, too, lived in that building since May 1981. His undated declaration, however, indicates that he did not enter the United States until 1984.

[REDACTED]'s form Affidavit of Residence is dated February 1, 1991 and indicates that the applicant lived with him at [REDACTED] in Elmhurst, New York from November 1987 to "Present Time" (February 1, 1991).

One of the employment verification letters is from Hanif Paint & Décor. Although it purports to be on company letterhead, the letterhead appears to be produced on a personal computer rather than by a printer and it does not contain the company's complete address.³ That body of that employment verification letter states, in its entirety,

³ The letterhead gives the company's address as "3 Avenue C, NY-11218." Although that zip code is for a section of Brooklyn, New York, the address on that purported letterhead does not note that the address is in Brooklyn.

This is to certify that [the applicant] was working as a Painter from June 1981 to August 1983 with this company. He was working on a regular basis and getting his salary in cash.

He is a hard and sincere worker.

I wish him a very successfully future. (sic)

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should be on letterhead, if the employer has such stationery, and must include the alien's address at the time of employment, the exact period of employment, periods of layoff, the duties of the alien with respect to that employment, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records. If employment records are unavailable, the employer must state, in a signed affidavit attested to under penalty of perjury, that they are unavailable, why they are unavailable, and that the employer is willing to testify.

The employment verification letter from Hanif Paint & Décor may arguably be on letterhead. It does not state what the alien's address was during his employment. It does not state whether the term of the applicant's employment was taken from company records and where those records are located, or that such records are unavailable and why.⁴

Because it does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) this employment verification letter will be accorded less weight than it would be if it did conform. However, it remains a document relevant to whether the applicant resided in the United States during the requisite period, and will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

Another employment verification letter is from _____ Construction and is dated June 10, 2004. The body of that letter states, in its entirety,

This is to certify that [the applicant] working as a Painter since May 1999 with this company. He was working on a regular basis and getting his salary in cash.

He is a hard and sincere worker.

I wish him a very successfully future.

[Errors in the original.]

Again, that employment verification letter purports to be on company letterhead, but the letterhead appears to have been generated by a computer. The typeface and format used in that letterhead are the same that were used in producing the letterhead of Hanif Paint & Décor. Further, the letter does

⁴ Although the letter states that the affiant was paid in cash that would not preclude the company keeping records.

not state the applicant's address during his employment, whether the information pertinent to the applicant's employment was taken from company records, whether those records are available, or, if not, why not, and whether the employer is willing to testify to the facts alleged. Again, although it will be accorded less weight this employment verification letter will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

More importantly, however, this office notes that, in addition to the similarity in the letterhead, the employment verification letter from Hanif Paint & Décor and J. Uddin Construction have the same date, were attested to by the same notary, and are almost identical in content including errors.⁵ These similarities strongly suggest that they were both composed and produced by the same person, rather than by two different previous employers of the applicant.

Again, pursuant to *Matter of Ho*, 19 I&N Dec. 582, 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.

In an April 30, 1991 employment verification letter, the president of Hashem Contracting Corporation stated that the applicant worked part-time for that company as a painter from January 1989 through the date of that letter. That letter bears the seal of [REDACTED], a notary public in King's County, New York, with identification number [REDACTED].

This office notes that the information in that letter conflicts with the applicant's account of his employment history given on the instant Form I-687 application, in which he stated that he did not work for Hashem Contracting Corporation after August 1998.

In an October 17, 1988 employment verification letter, the proprietor of Islam Construction, Incorporated stated that the applicant had worked for that company as a painter from September 1983 and continuing through the date of that letter.

In a July 16, 2006 employment verification letter, a corporate officer of B&H General Contracting Corporation stated that the applicant worked for that company from May 1982 to September 1987 as a construction helper. That employment verification letter was attested to by [REDACTED], notary identification number [REDACTED].

Again, this office notes that the claim that the applicant was working for B&H during that period conflicts with the applicant's own employment history as stated on the instant Form I-687, in which he asserted that he worked for Hanif Paint and Décor from June 1981 to August 1983, and for Islam Construction Company from September 1983 until December 1988. And once again, this conflict in the evidence, absence objective evidence to reconcile it, decreases the credibility of the remaining evidence in the record pursuant to *Matter of Ho*, 19 I&N Dec. 582.

⁵ Both letters conclude, "I wish him a very successfully future."

The medical doctor's November 18, 1987 letter is from [REDACTED] of [REDACTED] in Brooklyn, New York. A stamp under his signature indicates that [REDACTED] works at the Putnam Medical/Dental Clinic at that address. In that letter, [REDACTED] states that he first examined the applicant on February 2, 1982.

The November 21, 1990 letter from the Consulate of Bangladesh states that the applicant previously held a passport issued by Bangladesh on October 10, 1980, that was lost, and that expired on September 10, 1985.

The July 14, 2006 letter from the vice president of the Islamic Council of America Incorporated indicates that the writer has personally known the applicant since 1982 and saw him at worship services from 1982 to 1986.

The record contains a previous Form I-687 application, which the applicant signed on August 23, 1991. Included with that application are the undated form declarations of [REDACTED], [REDACTED], and [REDACTED].

With the instant Form I-687 application the applicant submitted the January 7, 1991 affidavit of [REDACTED] the February 1, 1991 affidavit of residence of [REDACTED] the letter from the Bangladeshi consulate, and the employment verification letters of Hanif Paint & Décor, Hashem Contracting Corporation, Islam Construction, Incorporated, and J. Uddin Construction.

In a Notice of Intent to Deny (NOID), dated June 26, 2006, the director noted that (1) Hanif Paint & Décor is not registered in the state of New York, (2) that CIS records do not show that many of the applicant's affiants were present in the United States during the salient period, (3) that [REDACTED], who purportedly notarized the applicant's affidavit from Hashem Contracting Corporation, is not actually a notary, (4) that the applicant had submitted no contemporaneous evidence in support of his claim of having entered the United States during May of 1981, and (5) that the affidavit from Islam Construction Incorporated attests to its employment of the applicant from 1983 until 1988, although that company did not incorporate until 1996.

That notice further stated that the applicant failed to submit evidence sufficient to demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982 through the date he filed his application as required by Section 245A(a)(2) of the Act.

The director granted the applicant thirty days to submit additional evidence. The director indicated that, because of the various shortcomings of the evidence of record CIS intended, absent evidence sufficient to overcome those shortcomings, to find the applicant ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice.

In response, the applicant submitted the affidavits of [REDACTED], [REDACTED], and [REDACTED], the July 14, 2006 letter from the Islamic Council of America

Incorporated, the employment verification letter of B&H General Contracting Corporation, the medical doctor's November 18, 1987 letter, the August 14, 1982 receipt for purchase of a futon, the envelope addressed to the applicant and postmarked October 22, 1987, and the applicant's July 18, 2006 letter.

In his letter, the applicant stated that although Islam Construction, Incorporated filed for incorporation during 1996, its owners had previously conducted business under that same name. The applicant also stated that, contrary to the assertion of the NOID, [REDACTED] is a legitimate notary public. The applicant provided no evidence to support either of those assertions.

In the decision of denial, dated August 8, 2006, the director denied the application based on the reasons stated in the NOID, that is that the applicant had failed to credibly demonstrate entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States through the end of the requisite period.

In that decision the director stated,

The affidavit from [REDACTED] is not credible because it refers to working at B&H Construction Corp. in July 1981, however this corporation was not a registered entity in the State of New York at that time. The affidavit from [REDACTED] is not credible because Service records do not indicate that this person was in the United States until at least 3/26/86. The affidavit from [REDACTED] is not credible because it is notarized by [REDACTED] who is not a licensed Notary Public in the State of New York as purported. The affidavit from Islamic Counsel of America, Inc. is not credible because it is not a registered entity in the State of New York. The affidavit from B&H General Contracting is not credible because it was not a registered entity in the State of New York until 7/3/89. The affidavit from [REDACTED] is from a clinic that is not registered in the State of New York. The copy of a receipt from A&A Brooklyn Bedding Corp. is not credible because it is dated 8/14/82, however this company was not registered in the Sate [sic] of New York until 4/22/1991.

On appeal, the applicant submitted a brief and copies of evidence previously submitted. In the brief the applicant asserted (1) that he is unable to provide utility bills in his name because he boarded in others' houses, and (2) that he was involved in some charity work during the salient period but has no evidence of it, (3) that he has no additional receipts, and (4) that although B&H Construction Corporation did not file for corporate status until July 3, 1989 the were doing "Free Lance Construction Business since the end of 1980. . . ." The applicant implied that, although he had received medical treatment from local doctors and clinics, he had no evidence of it.⁶

The applicant further urged that [REDACTED], who attested to the affidavit of [REDACTED], is a licensed notary, and that "The Service might be mistaken about the

⁶ The applicant's list of evidence he is unable to produce does nothing to strengthen his case.

Islamic Council of America, Inc. and the Clinic of [REDACTED] which are registered entity [sic] in the State of New York.”

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, through the requisite period.

Although the applicant submitted no evidence on this point, reference to a website maintained by the New York Department of State at <http://www.dos.state.ny.us/lcns/notary1.htm> (accessed March 18, 2008) shows that [REDACTED], identification number [REDACTED] is a registered King’s County, New York notary. Based on the similarity in the name, the identification number, and the location, this office finds that the documents in the record that were attested to by Sarwar B. Salam were duly notarized. The adverse evidence pertinent to this issue has been overcome.

That same website indicates that [REDACTED] identification number [REDACTED] is a registered Queens County, New York, notary. No reason exists to believe that the difference in identification numbers is significant, as they may change with each license renewal. This office finds that the documents in the record that were attested to by [REDACTED] were duly notarized. The applicant has overcome the adverse finding pertinent to this issue.

The decision of denial indicated that the affidavit from [REDACTED] is not credible because Service records do not indicate that this person was in the United States until at least March 26, 1986. This office is aware that many people are present in the United States without having obtained permission. Such people may not be shown on CIS records as being present in the United States when they are, in fact, present. That CIS records do not show some of the applicant’s affiants to have been present in the United States during the period he claims is not, in itself, strong evidence that they were not, in fact, here.

This office observes, though, that the only evidence submitted to show that [REDACTED] was present in the United States when he claimed to have been here is a photocopy of his driver’s license. That license was issued on September 27, 2004 and is not evidence that he was in the United States since September 1981, as he claims. Because no evidence in the record supports that [REDACTED] was present as claimed, his affidavit attesting to the applicant’s presence is less convincing.

Similarly, the presence of [REDACTED] is supported only by a drivers license issued on April 28, 2003, and the presence of [REDACTED] is supported only by a drivers license issued on December 31, 2002. Those items of evidence do not support that those affiants were present in the United States during the salient period, and their affidavits are less credible than they would have been if supported by such evidence.

Further still, as was noted above, the credibility of the form affidavits of [REDACTED], [REDACTED], and [REDACTED] suffers because the affiants clearly did not dictate their contents.

The decision of denial stated, "The Affidavit from [REDACTED] is from a clinic that is not registered in the State of New York." This office concurs that a search of the website of the New York Secretary of State and a google search failed to demonstrate the existence of the Putnam Medical/Dental Clinic.

Various sources, however, including telephone directories and web search results, confirm that Dr. [REDACTED] does work as a medical doctor at [REDACTED] in Brooklyn, as the letterhead and stamp under his signature on the letter suggest. This office finds curious that the clinic name cannot be located, but so long as [REDACTED] does actually treat patients at that address, the relevance of that fact to any issue material to this case is unclear. The applicant has overcome the adverse evidence pertinent to this issue.

The NOID indicated that the statements provided by [REDACTED], and [REDACTED] are not amenable to verification.⁷ This office notes that addresses were provided for all three.

The conclusory statement in the NOID does not indicate what efforts, if any, were made to verify the information in the statements of [REDACTED], and [REDACTED] or why those efforts failed, and contains no other reason why those affidavits would necessarily be unverifiable. The applicant has overcome the adverse finding on this issue.

As to the statements of [REDACTED] and [REDACTED], the NOID may have meant that they are not verifiable because they originated outside of the United States. This office notes that foreign provision of a statement does not preclude its consideration. That [REDACTED] and [REDACTED] indicate that they are the applicant's brothers, however, somewhat diminishes their objectivity and the reliability of the information in their statements.

Further, as was noted above, the evidentiary value of the affidavit from [REDACTED] is considerably diminished because he provided a residential history that differs from the residential history the applicant provided.

The employment verification letter from Hanif Paint and Décor, as was noted above, is of less evidentiary value because it does not conform to the requirements of the regulations. As was also noted, it is less credible because it was submitted contemporaneously with another employment verification letter, from J. Uddin Construction, that is uncannily similar, although the two firms are apparently unrelated. Further, reference to the New York Secretary of State website at http://appsex8.dos.state.ny.us/corp_public/corpssearch.entity_search_entry (Accessed March 18, 2008) shows that no such business entity is registered in New York. Further still, the claim of employment at Hanif Paint and Décor from June 1981 to August 1983 overlaps the applicant's claim to have worked for B&H from May 1982 to September 1987. For all of these reasons, the applicant's employment verification letter from Hanif Paint and Décor is suspect and of such

⁷ Although the NOID refers to them as affidavits, the documents submitted by [REDACTED] and [REDACTED] are not affidavits, but declarations, as they were not notarized or sworn.

extremely limited evidentiary value that it not only fails to support the applicant's claim of residence and presence in the United States during the period alleged, but also detracts from the credibility of the other evidence the applicant submitted and his assertions.

The applicant claimed, on the instant Form I-687, to have worked for Islam Construction Incorporated from September 1983 to December 1988, and an employment verification letter from that company was provided to support the assertion that he worked for that company from September 1983 until at least October 17, 1988, the date of the letter.

Reference to the New York Secretary of State website at http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry (Accessed March 18, 2008), however, confirms the director's assertion that Islam Construction Incorporated initially filed for corporate status on May 21, 1996. Prior to that date it did not exist.

The applicant has submitted no evidence to overcome the finding that he has claimed to work for that corporation at a time during which it did not exist. This discrepancy not only destroys the credibility of the individual employment verification letter, but also further damages the credibility of all of the other evidence submitted in support of the instant application and of the applicant's assertions.

The Islamic Council of America Incorporated at 401 E. 11th Street in New York City does not appear to exist, as such. Reference to a website maintained by the New York Department of State at http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry reveals no such corporation, past or present. A search for the telephone number provided indicates that the phone is used by various Islamic organizations, as well as Jehovah's Witness organizations. The applicant has not overcome the director's finding that the Islamic Council of America Incorporated, which purportedly provided evidence in support of the applicant's claims of residence and physical presence in the United States, does not exist.

Reference to a website maintained by the New York Department of State at http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry confirms that B&H General Contracting Corporation initially filed for corporate status on July 3, 1989. [REDACTED] claims to have met him at that company during July 1981, when they both worked for B&H General Contracting Corporation. A letter from the corporation was provided stating that the applicant worked there from May 1982 to September 1987. The corporation, however, did not exist on any of those dates. *Matter of Ho*, 19 I&N Dec. 582 requires that this contradiction, once raised by the director, must be overcome with objective evidence, rather than merely a feasible explanation.

Further, the applicant's claim of employment with B&H from May 1982 to September 1987, as was noted above, conflicts with his claim of employment for Hanif Paint and Décor from June 1981 to August 1983, and for Islam Construction Company from September 1983 until December 1988. The applicant has not provided any objective evidence to overcome the finding by the director that his claimed employer did not exist during the claimed period of employment or to explain why he has submitted conflicting claims.

Reference to a website maintained by the New York Department of State at http://appsex8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry indicates that A&A Brooklyn Bedding Corp. of 515 5th Avenue in Brooklyn initially filed for incorporation on April 22, 1991. The applicant's receipt showing that he purchased a futon from that corporation on August 14, 1982, when the corporation did not yet exist, is therefore highly suspect.

Once again, evidence the applicant submitted is contradicted by extrinsic evidence, and unless the contradiction is reconciled with objective evidence, not only is the evidentiary value of the receipt from A&A Brooklyn Bedding destroyed, but the evidentiary value of the remainder of the applicant's evidence is also eroded.

As was previously noted, the residential history provided by [REDACTED] conflicts with the applicant's own version of his residential history. As was also noted, the employment history provided on the April 30, 1991 employment verification letter from Hashem Contracting Corporation conflicts with the applicant's own version of his employment history. These contradictions between the applicant's assertions and the evidence, in addition to casting doubt on both those particular assertions and that particular evidence, decrease yet further the reliability of the applicant's remaining assertions and the remaining evidence.

The undated form declarations of [REDACTED] and [REDACTED] are of very little evidentiary weight.

First, every one of those declarants admits that they have no contemporaneous evidence to confirm that they were in the United States at any time during the salient period. Second, none of them included the declarants' phone numbers. Many of the declarants declined to provide requested residence information and other information requested on the forms.

Although all of those declarants stated that they know how the applicant entered the United States, none claimed first hand knowledge. Seven declarants claim that the applicant told them how he entered;⁸ three claim to have been told by the applicant's relatives, and two to have been told by the applicant's unnamed friend or friends.

The declarations of [REDACTED] and [REDACTED] are unsigned. Of those unsigned declarations, those of spouse [REDACTED] and [REDACTED] were typed, and the declarations of [REDACTED] and [REDACTED] plainly appear to have been handwritten by the same person. The evidence contains no indication that any of those purported declarants ever saw the declarations made in their names.

⁸ Of those, two are the applicant's brothers and were in Bangladesh, rather than the United States.

Five of those declarants do not claim to have been in the United States during the salient period. Of the seven who did claim to be in the United States, [REDACTED] and [REDACTED] only stated that they worked in New York. Three more, [REDACTED], [REDACTED], and [REDACTED] claim to have supported themselves with odd jobs. Only one of the declarants actually lists an employer. Verification of the veracity of the information on the other 11 affidavits is rendered yet more difficult.

In response to a specific request for the most detailed possible narrative of their association with the applicant during the requisite period, none of the declarants provided any degree of detail. No fact checking of such abstract declarations is possible. The declarations are yet less verifiable and yet less credible.

[REDACTED] stated that he entered the United States during August of 1981 and that he is a CSS/Newman class member, thus implying, at least, that he remained in the United States during the requisite period. He also stated, however, that he continued living and working in Bangladesh from January 1982 to May 1988. Having thus contradicted himself, his declaration is of minimal evidentiary value.

The declaration of [REDACTED] conflicts, as was noted above, with his January 7, 1991 form affidavit, which, in turn, conflicts with the applicant's own claim of entry into and residence in the United States. Obviously, this office is disinclined to accord any evidentiary weight to any of conflicting assertions.

Even if the various declarations, despite their lack of detail, lack of verifiability, and various discrepancies, might retain some vestigial evidentiary value, they are not reliable enough in themselves to support the applicant's claim of residence in the United States during the requisite period, and are not the objective evidence necessary to reconcile the inconsistencies in the other evidence provided.

Many items of documentary evidence in the record have been shown to have internal inconsistencies, or to provide information that conflicts with the applicant's own version of his history in the United States, or to conflict with each other. Each of those items of evidence is discredited.

However, as has been repeatedly noted above in the context of discussion of those many individual contradictions and inconsistencies, they also damage the credibility of the other evidence in the record. The credibility of the remaining items of evidence in the record is so damaged that they cannot credibly support the applicant's claim to eligibility, even though no inconsistencies or contradictions have been found in those particular documents.

The applicant failed to sustain his burden of establishing continuous unlawful residence in the United States from prior to January 1, 1982, through the end of the requisite period Section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on that basis, which has not been overcome on appeal.

In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.