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FILE: [REDACTED] Office: NEW YORK Date: **APR 22 2008**
MSC-05-042-10002

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: 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 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. 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. 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. 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 asserts that the evidence he submitted is credible, that the director failed to take into consideration his statement made in response to the Notice of Intent to Deny, and that he is eligible for temporary residence status.

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. See 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 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.* 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 November 11, 2004.

In an attempt to establish continuous unlawful residence in the United States during the requisite period, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since November of 1980, when he approached him seeking employment. The affiant also lists the applicant's place of residence since October of 1980. The affiant fails to demonstrate that he himself was present in the United States for the duration of the requisite period. He fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight

in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that the applicant has resided in the United States since before January 1, 1982, and has been residing in the country since. Here, the affiant fails to specify when and where he first met the applicant in the United States. The affiant also fails to demonstrate that he himself was present in the United States for the duration of the requisite period. He fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1980. Here, the affiant fails to specify when and where he first met the applicant in the United States. The affiant also fails to demonstrate that he himself was present in the United States for the duration of the requisite period. He fails to indicate the frequency in which he saw the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted attestations from the following entities:

- An affidavit from the manager of M&M Construction Inc. in which he stated that he has known the applicant since 1980, and that the applicant had been working part-time for the company from October of 1984 to December of 1990 as a construction helper. Here, the affidavit does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the company manager does not specify the places of residence where the applicant resided throughout the claimed employment period. The company representative fails to state whether or not the information he provided was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the affiant. Because the affidavit is not in compliance with regulatory standards and is lacking in specificity, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

- An affidavit from [REDACTED] of Z.D.A. Service Station in which he stated that he has known the applicant since 1981 and that he sometimes worked for him. This affidavit does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant does not specify the dates in which the company employed the applicant. Further, he fails to indicate the places of residence where the applicant resided during the claimed employment period. There is no indication that the information provided by the affiant was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the affiant.
- An affidavit from the general manager of N.S. General Contractor who stated that the company employed the applicant as a part-time construction helper from December of 1980 to October of 1988, that he was paid in cash and that he received no legal papers. This affidavit does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to indicate the places of residence where the applicant resided during the claimed employment period. There is no indication that the information provided by the affiant was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the affiant.
- An affidavit from [REDACTED] of Bangladesh Muslim Center Inc. who stated that he has known the applicant since 1982, that he prays often at the Mosque, and that he has been a great contribution to the development of the Mosque. This statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant didn't list any. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the affidavit. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show specific inclusive dates of membership, it does not state the places of residence where the applicant resided during his alleged membership, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant dated February 2, 2006. In the NOID the director noted that according to Citizenship and Immigration Services (CIS) records, the affiant Nur Alam Khan did not enter the United States until 1984. She further determined that research into the above named establishment's corporate and business status in the state of New York revealed grave discrepancies and multiple inconsistencies in the attestations provided by the applicant. The director also noted discrepancies in the dates of the applicant's departures and absences from the United States that were listed on his Form I-687 and contained within his sworn statement made on November 4, 2005, in comparison to the official stamped information contained in his passport. The director noted the discrepancies between the applicant's claimed period of absence from the United States and his sister's listing his address in May of 2000 to be in Bangladesh, which would place him outside the United States for more than 180 days before attempting to file Form I-687.

In response to the NOID the applicant stated that he entered the United States on October 16, 1980, and that he remained in the country until April 25, 1987. He further stated that he visited a friend in Canada on April 25, 1987, and reentered the United States on June 5, 1987. He states that his sister noted his address in Bangladesh in 2000 because that is where he was. He also states that he has been absent from the United States in the past, but never for more than 45 days. The applicant submits two additional affidavits.

The affiant [REDACTED] stated that he has known the applicant since 1980 and that he first met the applicant in Jackson Heights, New York. The affiant fails to indicate the frequency in which he saw the applicant during the requisite period. He fails to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The affiant [REDACTED] stated that he has known the applicant since 1982, and that the applicant is a good and honest person and a hard worker. The affiant fails to indicate how and where he met the applicant. He fails to indicate the frequency in which he saw the applicant during the requisite period. The affiant fails to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period.

In denying the application, the director noted that the two affidavits submitted by the applicant in response to the NOID did not appear to be credible or amenable to verification. The director further determined that a search of CIS records showed that affiant [REDACTED] did not enter the United States until January 9, 1986. The director concluded that the documents submitted by the

applicant did not constitute a preponderance of evidence sufficient to substantiate the applicant's claim of residence throughout the requisite period; and that the affidavits submitted were not credible and had not been corroborated by other evidence in the record.

On appeal, the applicant asserts that he reasonably explained in his response to the NOID his entry into and residence in the United States, and his brief absence from the country in 1987. He further asserts that the affidavits submitted are credible and amenable to verification. The applicant also asserts that due to his unlawful status he does not possess documentation such as utility bills or hospital records to support his claim of eligibility. He concludes by stating that he has submitted all documents that are statutorily required and has established his eligibility for temporary residence status. The applicant submitted a copy of a postmarked envelope whose stamp date is illegible, and he resubmits copies of affidavits from [REDACTED] and [REDACTED] on appeal. The applicant also submits the following attestations:

- A letter dated January 18, 1988 in which [REDACTED] states that the applicant was first examined by him on March 2, 1982, and that he was in fair health. Here, the declarant does not indicate the frequency in which he saw the applicant during the requisite period. There has been no corroborating evidence submitted such as medical records or appointment notices to substantiate the declarant's claim. Here, the declarant's claim fails to support the applicant's assertion that he was present in the United States before January 1, 1982. Because the statement lacks detail and does not support the applicant's assertion of residency, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] Vice President of Islamic Council of America Inc. in which he states that while he was the Imam of Madina Masjid – from 1982 to 1986 – he observed the applicant attending Jum'aa Prayer services and other Islamic holiday services. This statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant didn't list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show specific inclusive dates of membership, it does not state the places of residence where the applicant resided during his alleged membership, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and does not conform to regulatory standards, it can be accorded only minimal

weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since April of 1981 and that they met at [REDACTED] Brooklyn, New York, where he used to live. He further states that the applicant has been continuously present in the United States from January of 1982 to May of 1988, barring a brief absence in 1987. Here, there is no evidence in the record to demonstrate that the affiant has firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Although the affiant submitted a photocopy of his New York Driver License issued to him in October of 2002, it is insufficient to establish that he himself was present in the United States during the requisite period. It is further noted that the affiant fails to demonstrate the frequency in which he saw the applicant. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since December of 1980 and that they met at the affiant's place of business in Brooklyn, New York. He further states that the applicant has been continuously present in the United States from January of 1982 to May of 1988, barring a brief absence in 1987. Here, there is no evidence in the record to demonstrate that the affiant has firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Although the affiant submitted a photocopy of his New York Driver License issued to him in February of 1997, it is insufficient to establish that he himself was present in the United States during the requisite period. It is further noted that the affiant fails to demonstrate the frequency in which he saw the applicant. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since August of 1981 and that they met at the applicant's residence at [REDACTED] Brooklyn, New York. He further states that the applicant has been continuously present in the United States from January of 1982 to May of 1988, barring a brief absence in 1987. Here, there is no evidence in the record to demonstrate that the affiant has firsthand knowledge of the applicant's circumstances

and whereabouts throughout the requisite period. Although the affiant submitted a photocopy of his New York Driver License issued to him in July of 2001, it is insufficient to establish that he himself was present in the United States during the requisite period. It is further noted that the affiant fails to demonstrate the frequency in which he saw the applicant. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to address the multiple discrepancies raised by the director in the NOID, which have been made a part of the record. The applicant fails to address the discrepancies found in the statements made by [REDACTED] and [REDACTED]; and the non-existence of Bangladesh Muslim Center Inc. Bangladesh Society Inc., New York, and Z.D.A. during the requisite period. The applicant also fails to address issues raised by the director in her denial, as noted above. The attestations submitted by the applicant are not credible and lack detail, and therefore, can only be afforded very minimal weight in establishing the applicant's residence during the requisite period. The attestations submitted by the applicant on appeal conflict with information he provided in his Form I-687 application, are generic in nature, are lacking in detail, and do not substantiate the applicant's claim of continuous residence in the United States since before January 1, 1982.

The absence of sufficiently detailed 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 applicant's contradictory statement on his Form I-687 application 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 for the requisite period 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.