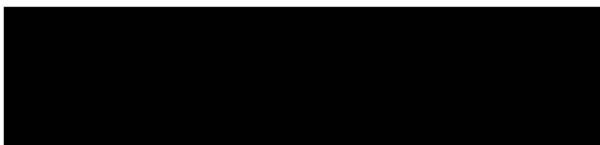


**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529

**PUBLIC COPY**

41



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

FILE:

MSC-05-050-10229

Office: NEW YORK

Date: **AUG 27 2008**

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 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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. P. 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. 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.

The applicant represents himself on appeal. He asserts that he has met the requirements to establish eligibility for temporary resident status pursuant to the settlement agreements. He offers in support of his appeal several previously submitted documents, translated photocopies of Bangladesh diplomas from 1978 and 1980, and a photocopy of a rent receipt dated May 27, 1982.

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).

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) 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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 19, 2004. The applicant stated therein that he was born on January 2, 1962 in Bangladesh. 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 on [REDACTED] [REDACTED] from August 1981 to December 1995. Similarly, at part #33, where applicants were asked to list all employment in the United States since first entry, the applicant explained that he was not employed between April 1981 and September 1981. Thereafter, the applicant listed a number of Indian restaurants and a deli as sources of employment from October 1981 to the present.

The applicant submitted the following documentation:

- Two notarized declarations from [REDACTED] dated April 29, 1991 and October 12, 2004. [REDACTED] claims that the applicant resided in his apartment at [REDACTED] from August 28, 1981 to December 1995. [REDACTED] explains that the “rent receipts and utility bills are on [his] name.” However, the record does not contain any copies of a lease agreement or rental receipts to corroborate [REDACTED] claim that he resided at that address between 1981 and 1995. Furthermore, the affidavits are vague and factually non-specific. They do not explain how the affiant knows the applicant and are thus not subject to independent verification. Therefore, [REDACTED] affidavits are of limited probative value in establishing the applicant’s entry and residence in the United States for the requisite period of time.
- Affidavits of employment from Pick-A-Bagel, stating that the applicant has been employed there since January 1998; the Amin Indian Cosine (sic) restaurant, stating that the applicant was employed there from February 1991 to November 1997; the Lal Bagh Cuisine (sic) of India restaurant, stating that the applicant was a part time employee from January 1984 to July 1987 and again from September 1987 to December 1990; and the Prince of India Restaurant, stating that the applicant was a part time employee from October 1981 to December 1983. The AAO notes that New York Department of State Division of Corporations records indicate that the Prince of India Restaurant did not commence doing business until November 26, 1980, and the Lal Bagh Cosine (sic) of India did not commence operations until June 27, 1986, after the date when the applicant is alleged to have been employed there. Furthermore, the employment records submitted by the applicant do not meet the regulatory requirements necessary to be accorded weight as independently verifiable business records pursuant to 8 C.F.R. §245a.2(d)3(i). For example, the employment statements do not state whether or not the information was taken from official company records, where the records are located, and whether Citizenship and Immigration Services (CIS) officers may have access to them. If the employee payrolls are unavailable, an affidavit form letter stating that the alien’s employment records are unavailable and why such records are unavailable may be accepted. The affidavit form letter must be signed, attested to by the employer under penalty of perjury, and must state the employer’s willingness to come forward and give testimony if requested. In the matter presently before the AAO, none of the employment affidavits meet these requirements, and several appear to be fraudulent as the letterhead stationery contains misspellings, and the applicant’s alleged employment predates the existence of at least two of the alleged employers.
- A letter from the Islamic Council of America, Inc., dated August 28, 2004, and signed by Secretary [REDACTED]. The letter is notarized, and [REDACTED] states that the applicant “is well known to us since December 1981.” The AAO notes that this document is of limited probative value. It does not show inclusive dates of the applicant’s membership,

where he resided during the membership period, nor does it establish how the affiant knows the applicant, or the origin of the attested information. 8 C.F.R. § 245a.2(d)3(v).

A letter from the Bangladesh Society, Inc., of New York, dated September 30, 2004, and signed by [REDACTED], General Secretary. This statement is not notarized; however, it identifies the applicant by name and provides an address where the applicant resided during the period in question. [REDACTED] states that he has personally known the applicant "for the last 20 years." Nonetheless, this document does not establish how the author knows the applicant, or the origin of the attested information. 8 C.F.R. § 245a.2(d)3(v). Therefore, it will be accorded such weight as is appropriate.

- A notarized letter from [REDACTED] dated May 2, 1987. [REDACTED] avers that the applicant was "first examined by me on 11/24/82" and thereafter on a series of dates between April 24, 1982 and March 2, 1987. The record before us indicates that Dr. [REDACTED] license to practice medicine was suspended on November 7, 1994 and his petition for the restoration of his New York State medical license was denied by the New York Board of Regents on September 9, 1999. Thus, the credibility of [REDACTED] attestations is severely limited, and this document is accorded little probative weight.

- Notarized declarations from [REDACTED]

These individuals all claim to have known the applicant at some point during the statutory period. However, none of the affidavits explain with any factual specificity how they know the applicant, how they know when he entered the United States, or how they date their acquaintance with him. Some of the affidavits are not signed by the affiant, and several indicate that they did not enter the United States until well after the period of time in question. For example, [REDACTED] claims that his sister told him the applicant entered the United States before January 1, 1982, as [REDACTED] had not entered the United States until 1998. The affidavits of [REDACTED] and [REDACTED] exhibit similar deficiencies. As such, none of these affidavits can be afforded probative weight in assessing the credibility of the applicant's claim of entry and residence for the requisite period of time.

- Notarized affidavits from [REDACTED] - These affiants aver that they are brothers to the applicant, and were informed by their mother of the circumstances of the applicant's entry into the United States. At the time of submission, none of the affiants resided in the United States, and therefore, their statements have little probative value. Additionally, the AAO observes that the notarized statement from [REDACTED] reveals that the affiant did not enter the United States until August 1999, and that he was told by his brother that the applicant entered the United States before January 1, 1982. Once again and for similar reasons as noted above, this affidavit is of no probative value.

- A photocopy of an envelope addressed to the applicant in New York from Bangladesh with a postmark that appears to be January 9, 1983. However, the postmark appears to have been altered, because the “83” in 1983 is stamped in a darker ink. Thus, the envelope is of questionable credibility in establishing the applicant’s residence in the United States for the requisite period of time.

The applicant appeared for an interview with a Citizenship and Immigration Services (CIS) officer on March 1, 2006. The applicant stated that he entered the United States on August 28, 1981, with the assistance of a “broker”, traveling from Dakar to Bombay to Germany, and on to Guatemala and Mexico, and to New York. The applicant claimed to have no documentary evidence of his travels, explaining that the broker kept all the documents. The applicant submitted two additional sworn declarations from [REDACTED], dated February 28, 2006, and [REDACTED], dated February 27, 2006. Both affiants claim to have known the applicant at some point during the statutory period; both claim that they “are very good friends.” However, neither affidavit states with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which the applicant was residing from the time of their acquaintance. The declarants’ ambiguous reference to meeting the applicant at an Indian restaurant, and at a family party at an unspecified point in time is not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarants’ claims to have a friendship with the applicant spanning 20 years. For these reasons, the declarations from [REDACTED] have very limited probative value as evidence of the applicant’s continuous residence in the United States since a date prior to January 1, 1982.

The district director issued a Notice of Intent to Deny (NOID) on March 7, 2006. The director outlined the deficiencies inherent in the applicant’s documentary evidence submitted in support of his application for temporary residence, explaining that the applicant had failed to submit any credible documentation beyond his own assertions that he met the requirements for eligibility pursuant to the terms of the settlement agreements. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

The applicant submitted a statement in response to the NOID dated April 3, 2006. The applicant reaffirms that the evidence he submitted with his original Form I-687 application is sufficient to establish his eligibility for temporary resident status. The applicant explains that the Lal Bagh restaurant and Prince of India restaurant are now closed, but that he was employed there during the dates specified. However, this does not explain the contrary evidence revealed by the New York Department of State Division of Corporations records. Furthermore, the employment records do not meet the regulatory requirements for authenticity outlined in 8 C.F.R. §245a.2(d)3(i).

The applicant claims further that [REDACTED] license was suspended after the statutory period, and that it is not possible to alter a postmark on an envelope. However, the AAO notes that Dr.

Mohan's license was suspended after he pleaded guilty to harassing, abusing, or intimidating a patient; thus seriously undermining his overall credibility. Furthermore, it is no defense to state that a postmark cannot be altered, and the postmark on the envelope submitted by the applicant remains suspicious, is of dubious authenticity, and remains unexplained on appeal.

Additionally, the applicant submitted photocopies of the [REDACTED] declarations noted above, as well as an additional sworn declaration from [REDACTED] dated February 10, 2006. All three declarations are not credible or probative evidence of the applicant's eligibility for temporary resident status for the reasons cited earlier.

The director denied the application for temporary residence on April 10, 2006. In denying the application the director noted that the applicant had not submitted credible probative evidence to establish that he entered the United States at some point prior to January 1, 1982, and resided here for the requisite period of time. The director noted that in response to the NOID, the applicant also submitted a signed statement from [REDACTED] who claims that the applicant "is my patient since [REDACTED]. However, New York State records indicate that Dr. [REDACTED] a pediatrician. The director concluded that the letter from [REDACTED] was not credible, as there is no explanation why the applicant, an adult, would be under the care of a pediatrician. The director also noted that the new evidence submitted by the applicant in response to the NOID as well as the evidence offered during his interview was insufficient to overcome the deficiencies outlined in the NOID. 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 reaffirms that the documentary evidence he submitted with the original Form I-687 as well as the evidence offered at his interview and in response to the NOID is sufficient to meet the requisite burden of proof. The applicant submits no new evidence with the Form I-694 (Notice of Appeal), but offers only photocopies of earlier submitted affidavits.

The AAO observes that the affidavits from the applicant's various friends, acquaintances, and series of employers lack specific factual detail, and are not amenable to verification for the reasons listed above. As such, they are not credible, probative evidence of the applicant's eligibility for temporary resident status.

In summary, the applicant has not provided any credible, probative evidence of residence in the United States relating to the period from January 1, 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.