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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: NEW YORK Date:

AUG 29 2008

MSC 06 098 20429

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:

[REDACTED]

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, that is date stamped January 6, 2006. The applicant was interviewed on June 15, 2006. On March 29, 2006 and on June 23, 2006 the director issued Notices of Intent to Deny (NOID) the application. The director issued her decision on August 14, 2006 and the applicant subsequently submitted this appeal.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

In support of the Form I-687, the applicant submitted affidavits and letters of employment to establish residency in the United States for the requisite time periods:

- An undated letter notarized on August 1, 1992 on the letterhead of the Taj Restaurant wherein the manager, [REDACTED] indicates that the applicant worked in the restaurant from July 1987 to December 1988. The letterhead does not include a phone number.
- An undated letter notarized on August 1, 1992 on the letterhead of the Tandoor restaurant wherein the manager, [REDACTED] indicates the applicant was the restaurant's employee from August 1981 to April 1987.
- A July 29, 1993 form affidavit signed by [REDACTED] who declares that the applicant resided with him from June 1981 to November 1990 at [REDACTED] in New York.
- A July 21, 1992 affidavit signed by [REDACTED] who declares that the applicant visited him in Canada and stayed with him from May 10, 1987 to June 15, 1987 in Canada.
- A May 22, 2002 affidavit signed by [REDACTED] who declares that he formerly was the applicant's neighbor. [REDACTED] that the applicant was

physically present and worked in the United States from June 1981 to present except for a departure in May 1987 to June 1987. indicates that he knows this because he had contact with the applicant on a weekly/monthly basis.

- A May 22, 2002 affidavit by who states he is a citizen of the United States and who declares that he formerly was the applicant's neighbor. states that the applicant was physically present and worked in the United States from June 1981 to present except for a departure in May 1987 to June 1987. indicates that he knows this because he had contact with the applicant on a weekly/monthly basis. A second affidavit by, dated July 20, 2006, wherein the affiant declares that he met the applicant in New York City, New York in February 1982. indicates that he continues to maintain contact with the applicant and that it is his understanding that the applicant has been living in the United States since 1981. The applicant provides a telephone number and an undated photograph of himself and the applicant. The affidavit contains the notation that the number did not work.

A March 18, 2004 letter written on the letterhead of the Islamic Council of America, Inc. and signed by certifies that while he was the of the in 1982-1986, he had seen the applicant attending Friday Prayers and Islamic holidays. The letter includes a phone number. The letter bears the notation that there was no answer at the telephone number provided.

- A July 20, 2006 affidavit by who declares that he has known the applicant since 1983. states that the applicant taught religious education from March/April 1983 to December 1988 to the affiant at the affiant's house. Mr. indicates his understanding that the applicant has been in the United States since 1981. The affiant provides a phone number, evidence that he is a United States citizen, and an undated photograph of himself and the applicant. The affidavit contains a notation that the phone number was disconnected.
- A July 20, 2006 affidavit by who claims to be a lawful permanent resident and living in the United States since 1970 and who declares that he met the applicant in December 1981 in downtown Manhattan, New York. states that he thereafter periodically met the applicant at religious and cultural events and at the marketplace. The applicant provides a phone number and an undated photograph of himself and the applicant. The affidavit contains a notation that the phone number provided did not accept incoming calls from private numbers.

The record also includes an envelope addressed to the applicant from an address in Bangladesh. The envelope bears a postal stamp date of December 24, 1984. A review of the Scott 2006 Standard Postage Stamp Catalogue depicts the same stamp as shown on the envelope and indicates that the stamp was

issued from 1989 to 1999. Thus, it appears that the stamp on the envelope was not in existence in 1984 when the envelope was allegedly mailed from Bangladesh.

On appeal the applicant submits additional affidavits:

An affidavit dated September 25, 2006 wherein the affiant, [REDACTED] affirms his previous affidavit and indicates that he never received a call from any person and/or institution regarding his affidavit.

An affidavit dated September 25, 2006 wherein the affiant, [REDACTED] affirms his previous affidavit and indicates that he never received a call from any person and/or institution regarding his affidavit.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date the application was filed. The only evidence in the record regarding the applicant's entry into the United States prior to January 1, 1982 is the applicant's statement, deficient affidavits, two affidavits by the same person who provides different information in each affidavit, and an employer's letter.

The form affidavits from [REDACTED] do not indicate that the affiants were in the United States during the requisite time period. The July 20, 2006 affidavit signed by Md. [REDACTED] provides a general statement that he met the applicant in December 1981 in Manhattan and thereafter periodically met the applicant at religious and cultural events and at the marketplace. The affidavit does not provide details describing the circumstances and events of the initial meeting or details of the nature and frequency of their contact. In view of the general nature of the information that characterizes this affidavit, the affidavit lacks sufficient indicia to establish the reliability of the affiant's assertions. The July 20, 2006 affidavit by [REDACTED] indicates only that it is the affiant's understanding that the applicant had been in the United States since 1981, thus the affidavit has minimal probative value in establishing the applicant's entry into the United States prior to January 1, 1982 throughout the requisite period.

The May 22, 2002 affidavit from [REDACTED] indicates that he was formerly the applicant's neighbor and thus knows that the applicant was physically present in the United States and worked in the United States since June 1981. In [REDACTED] July 20, 2006 affidavit, [REDACTED] does not describe the circumstances of meeting the applicant but only indicates it was in New York City in February 1982 and declares that it is his understanding that the applicant had been living in the United States since 1981. Mr. [REDACTED] two affidavits present two versions regarding the affiant's knowledge of the applicant's presence in the United States prior to January 1, 1982. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The employer's letter from the Tandoor restaurant does not include the applicant's address at the time of his claimed employment with the restaurant, does not indicate whether there were periods of layoff, does not contain a declaration that the employee information was taken from company records, identify the location of such company records, or state whether such records are accessible or in the alternative state the reason why such records are unavailable, as required under 8 C.F.R. § 245a.2(d)(3)(i). The employer's letter is insufficient to establish that the applicant resided and worked in the United States prior to January 1, 1982.

The March 18, 2004 letter written on the letterhead of the Islamic Council of America, Inc., Madina Masjid and signed by [REDACTED] is not accompanied by identification or proof that the affiant was in the United States prior to January 1, 1982 and further does not detail the circumstances that support the affiant's recollection of the applicant's attendance at Friday Prayers and Islamic holidays from 1982 to 1986. The letter does not include the applicant's address at the time of the applicant's attendance and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

The AAO observes that each affidavit submitted provides only general information regarding how the applicant met each affiant and how each affiant subsequently interacted with him. These affidavits do not provide sufficient details of the circumstances and events surrounding the initial meeting and subsequent interactions between the affiants and the applicant. The affiants do not detail any events sufficient to establish a time frame or provide information regarding the affiants' continuous relationship with the applicant. Thus, these affidavits have minimal probative value.

These affidavits unsubstantiated by detail, an envelope with a questionable date stamp, and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to establish 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 and the applicant's reliance upon deficient affidavits, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States 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. The appeal will be dismissed.

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