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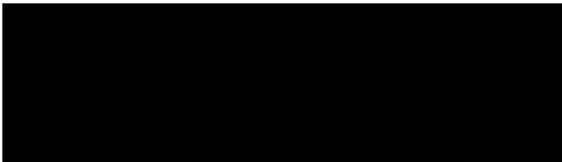
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 088 10077

Office: NEW YORK

Date: **DEC 11 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 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 on December 27, 2004. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On August 12, 2005, the director issued a notice of intent to deny (NOID) stating that the applicant was statutorily ineligible for temporary resident status because he had not credibly established that he was residing in the United States in an unlawful status prior to January 1, 1982 and throughout the requisite period. The applicant was granted 30 days from the date of the notice to submit additional evidence in response to the NOID. In response, the applicant submitted a statement asking that his case be considered on humanitarian grounds. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period. The director also determined that the applicant had not established that he was continuously physically present in the United States for the requisite period.

On appeal, the applicant requests that his case be considered on humanitarian grounds. The applicant explains that he tried his best to establish prima-facie eligibility as well as continuous residence and physical presence requirements during the statutory period. The applicant submits additional evidence for consideration.

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 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the

provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982 (2) has continuously resided in the United States in an unlawful status for the requisite period of time and (3) has continuous physical presence in the United States from November 6, 1986 through the requisite period. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in New York from October 1981 to August 1989. He indicated at part #33 of his Form I-687 application that he was self-employed in New York as a day laborer from December 1981 to present. The Form I-687 application at part #32 lists one absence from the United States for the applicant since his initial entry from July to August 1987.

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided multiple documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period.

The applicant claims in his affidavit dated December 23, 2004 and in his I-687 interview conducted May 26, 2005 that he entered the United States without inspection on October 10, 1981. The sworn affidavits from [REDACTED] and [REDACTED] fail to attest to the applicant's illegal entry into the United States prior to January 1, 1982 and his continuous unlawful residence in the United States for the duration of the requisite period. Both affiants state in their affidavits that they have known the applicant since January 1982 and that they first met him in January 1982. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants fail to explain how they gained the personal knowledge of the applicant's continuous presence in the United States throughout the requisite period. The affidavits submitted do not contain sufficient information to support the applicant's claim.

In the affidavit dated February 17, 2006 from [REDACTED], the affiant states that he has known the applicant since 1981 and that the applicant was continuously present in the United States from January 1982 until May 1988. The affiant does not explain whether the applicant continued to live illegally in the United States after May 1988. The affidavit does not include sufficient detailed information about his relationship with the applicant and the applicant's unlawful entry and continuous residency in the United States since October 10, 1981. The affiant also fails to indicate any other details that would lend credence to his claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not refute any of the director's concerns regarding the lack of credibility of the affidavits provided to prove his entry prior to January 1, 1982 and his continuous residency in an unlawful status throughout the requisite period. Therefore, the affidavits have little probative value.

The applicant has provided copies of envelopes addressed to him. However, the date the letters were posted is illegible.

The applicant also provided a letter dated February 25, 2006 signed by [REDACTED] President of the Greater Comilla Association, USA. The president states in this letter that the applicant is personally known to him and is a member of the organization since 1991. The applicant also submitted a copy of his membership form for the Bangladesh Society, Inc. that he signed on

February 11, 2003. The AAO finds this information irrelevant to this proceeding as it is outside the requisite period to establish the applicant's eligibility for temporary residence status.

The applicant submits a welcome letter regarding his long distance service with AT & T dated April 15, 1983 and a receipt from Bedding and Furniture Discounts dated February 30, 1984. These documents do not establish the applicant's entry into the United States prior to January 1, 1982 and do not provide evidence of the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The affidavits while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's 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 requisite period. Further, there is no provision in the regulations or statute for consideration of temporary residence status under section 245A for humanitarian grounds.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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 also failed to establish that he has been continuously physically present in the United States since November 6, 1986. 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.