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U.S. Citizenship  
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FILE:

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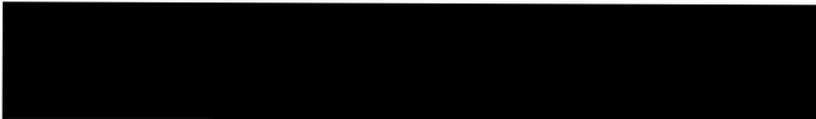
IN RE:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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. Specifically, the director that the applicant has not submitted relevant, probative, and credible evidence to explain or answer the questions raised concerning the applicant's residency as stated in the Notice of Intent to Deny (NOID). 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 submitted established his continuous residence in the United States for the requisite period and also contends that the director failed to consider or properly consider the documents submitted in support of the application.

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. 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 demonstrate that he resided in the United States for the duration of the requisite period. As discussed here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 5, 2005. 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 in Brooklyn, New York, from November 1981 to May 1985. Similarly, at part #33, he showed his first employment in the United States was in self-employment “as a door-to-door daily labor,” no employment location stated, from August 1981 to 1990 (as corrected/append by CIS). The applicant also submitted his social security statement record received from the U.S. Social Security Administration stating an earnings record history between 1989 to 2001.

The applicant submitted the following documentation:

Affidavits made by the applicant on May 2, 2005 and March 26, 2006. The applicant stated that his name is [REDACTED] that he entered the United States on June 30, 1981, without a visa or inspection (at a port of entry) into the United States where he has resided continuously in unlawful status except for an absence from which the

applicant returned without obtaining an entry visa or inspection at a port of entry;<sup>1</sup> that he was turned away<sup>2</sup> “several times” at the “Legalization Office” of Citizenship and Immigration Services (CIS) “. . . because I traveled outside the United States without advance parole and returned and reentered without any legal papers;” that he is presenting additional documentary evidence; and that at no time was he out of the United States for more than 45 days.<sup>3</sup>

- A notarized declaration from [REDACTED] dated May 12, 1992, residing at Brooklyn, New York, who stated that he/she is a United States citizen. [REDACTED] stated that he/she first met the applicant ten years ago at a community social function in Brooklyn, New York and the applicant “ is known to me since 1982.” According to this affiant, the applicant was seen by him/her in Brooklyn in 1982. Since the applicant spent nine years in Florida, and as far as [REDACTED] has divulged he/she is a resident of New York, he could not know to his personal knowledge what the applicant was doing out of state during those nine years or whether the applicant was continuously physically present in the United States.
- An un-notarized statement dated May 15, 1993, from two individuals with illegible and unintelligible signatures over rubber stamped impressions of the secretary and president of the [REDACTED] of Brooklyn, New York, stating that [REDACTED] who was a great contribution towards the development of this Islamic center since October 1985.” According to these individuals, the applicant was seen by them in Brooklyn since October 1985. Since the applicant spent nine years in Florida between June 1985 to November 1996, they could not have seen him, or know to their personal knowledge what the applicant was doing out of New York State or whether the applicant was continuously physically present in the United States.

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<sup>1</sup> According to the applicant he departed the United States then returned, without visa or inspection, between August 15, 1987 to October 12, 1987. The applicant has submitted copies of his passport as proof of identity issued by The People’s Republic of Bangladesh at New York on March 7, 2003. According to the record of proceeding this was his only absence from the United States but the applicant has submitted documentary evidence of his marriage that took place in Bangladesh on June 17, 1998. There is no explanation in the record of the applicant’s attendance at his marriage in Bangladesh or his absence from the United States for an indeterminate period. The applicant has also submitted two birth certificate for issue from that marriage that occurred on January 27, 1999, and July 7, 2002 in New York.

<sup>2</sup> The applicant is asserting that he is a class member under the CSS/Newman Settlement Agreements mentioned above. These class members are defined as those who attempted to file a legalization application and fee but CIS or a qualified designated entity (QDE) refused to accept the application because the applicant had traveled outside of the U.S. and returned with a nonimmigrant visa.

<sup>3</sup> That is incorrect. According to the applicant he departed the United States then returned between August 15, 1987 to October 12, 1987, that is a total absence of 58 days.

An affidavit made March 27, 2005, by [REDACTED] residing at West New York, New Jersey who stated that he is a United States citizen. [REDACTED] stated that the applicant " is personally known to me since June/81 and he has been acquainted in the United States in a restaurant where he worked as a kitchen helper (in a restaurant at Jackson Heights, New York)." [REDACTED] then provided with specificity street/ mailing addresses and a chronological progression of calendar dates for locations where he stated the applicant resided from December 1996 to March 27, 2005. [REDACTED] recounts in his affidavit that seven years ago " . . . the longest period during which the residence described in which I have not seen the applicant is 08/15/87 to 10/12/87 during which period he [the applicant] was outside of the United States for visiting his family in Bangladesh." Despite the passage of approximately 23 years and 10 months, [REDACTED] swears under oath that he has known the applicant " . . . since June/81 and he has been acquainted in the United States in a restaurant where he worked as a kitchen helper (in a restaurant at Jackson Heights, New York)." The applicant did not indicate that he worked as a kitchen helper in a restaurant at Jackson Heights, New York until 1990. [REDACTED] has provided street/ mailing addresses and exact calendar dates over an approximate 24-year period for locations where he stated the applicant resided from December 1996 to March 27, 2005 although he fails to say how he knows these detailed facts. [REDACTED] recounts in his affidavit that seven years ago " the longest period during which the residence described in which I have not seen the applicant is 08/15/87 to 10/12/87 during which period he [the applicant] was outside of the United States for visiting his family in Bangladesh." Again [REDACTED] fails to say how he knows or was aware that the applicant traveled outside the United States without advance parole and returned and reentered without any legal papers or whether the applicant traveled at other times. Since the applicant spent nine years in Florida between June 1985 to November 1996, and as far as [REDACTED] has divulged he is a resident of New York, he could not know to his personal knowledge what the applicant was doing out of state or whether the applicant was continuously physically present in the United States.

An affidavit made by [REDACTED] of Brooklyn New York, made July 8, 2003, stated that he knew that the applicant "entered the United States before January 01, 1982 and has been continuously physically present in the United States except for a short absence." Mr. [REDACTED] stated that he has known the beneficiary since "June/81." [REDACTED] also stated that the applicant tried to apply for legalization between "May 05, 1987 and May 04, 1988" but he stated that the applicant was turned away since the applicant traveled outside the United States without advance parole. [REDACTED] has not divulged how he knew the applicant, and again, since the applicant spent nine years in Florida,<sup>4</sup> and as far as Mr. [REDACTED] has divulged he is a resident of New York, he could not know to his personal knowledge what the applicant was doing out of state or whether the applicant was continuously physically present in the United States except for a "short absence." Regarding the allusion by [REDACTED] to the short absence, presumably he is referring to a period when the applicant by his own statement from 08/15/87 to 10/12/87 (58 days) was outside of the United States visiting his family in Bangladesh. In 1987, the applicant

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<sup>4</sup> From June 1985 to November 1996.

resided in Boynton Beach, Florida, not Brooklyn, New York, and therefore [REDACTED] could not know to his personal knowledge what the applicant was doing or where he traveled for those nine years the applicant spent in Florida.

- A notarized statement made by [REDACTED] of Elmhurst, New York, a United States citizen dated March 19, 2005, that the applicant is “well known to me since 1981” and he went to the CIS legalization office to file the applicant’s legalization application. [REDACTED] then recounts the applicant’s subsequent encounters with the CIS legalization office to file the applicant’s legalization application. No information was provided in the statement how [REDACTED] knows what occurred between the applicant and that CIS office. Again, the applicant by his own statement from 08/15/87 to 10/12/87 was outside of the United States visiting his family in Bangladesh. In 1987, **the applicant** resided in Boynton Beach, Florida, not Brooklyn, New York, and therefore [REDACTED] could not know to his personal knowledge what the applicant was doing or where he traveled for those nine years the applicant spent in Florida.
- A notarized statement made by [REDACTED] of New York, New York, a United States citizen dated November 23, 2005, that stated that he is the proprietor of the Dakota Bar and Grill in New York, New York. He stated that the applicant worked for him between November 1982 and August 1984 and was paid in cash for the applicant’s services as a helper “my above [named] store.”

It is noted that none of the declarants stated 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 addresses at which he was residing during the critical time period between 1981 and 1983. As was discussed above, the applicant departed the United States then returned without visa or inspection between August 15, 1987 to October 12, 1987. The applicant was residing in Boynton Beach, Florida from June 1985 through November 1996. The declarants' uniformly ambiguous references that the applicant was “well known to me since 1981,” “... is known to me since 1982,” was a great contribution towards the development of this Islamic center since October 1985,” and is “is personally known to me since June/81” are not persuasive for the reasons above stated. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship, community or religious relationship with the applicant **spanning many years. Not one affiant except [REDACTED] acknowledges that the applicant left New York for nine years. [REDACTED] offers no explanation why he was able to provide day, month and year dates, and exact street addresses for the applicant over an approximate 24 year span of time mirroring the applicant’s CIS Form information or how [REDACTED] would know the exact dates of what would have been a surreptitious trip by the applicant to Bangladesh and return. For these reasons, all of these declarations from the applicant's declarants have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.**

Additionally, two additional employers furnished employment verification letters. Deluxe Home Improvements of Brooklyn New York, stated by its letter dated May 18, 1986, that the applicant was employed as a construction helper from May 15, 1982 to November 28, 1985. The name of the

letter's author is illegible. [REDACTED] of [REDACTED] of Lynbrook, New York, stated that the applicant was employed as a construction worker from December 8, 1987 to June 27, 1988. According to information provided by the applicant on his CIS Form I-678, the applicant resided in Boynton Beach, Florida, not in New York, from June 1985 to November 1996. The employment references are inconsistent with the applicant's statement of residences. Furthermore, the applicant did not identify these employers on his Form I-687. There are inconsistency in information and statements provided by the petitioner such that the AAO is unable to determine the truth in the matter and therefore the employment references are disregarded as unworthy of reliance.

For all the above declarants, no identity documents were submitted, proof of the affiant's presence in the United States during the statutory period nor proof there was some relationship between the applicant and the affiant.

As additional evidence the applicant has submitted the following relevant documents: a letter from [REDACTED] notarized February 28, 2006, that he has known the applicant since December 1981;<sup>5</sup> a notarized statement given by [REDACTED] of Woodside, New York, made March 3, 2006, that the applicant "worked with me as a deliveryman from December 1, 1985 to August 9, 1987," in Manhattan, New York, New York, and then in 1988 to "till [sic until] date working together."<sup>6</sup>

Further the applicant has submitted a notarized statement from [REDACTED] made March 4, 2006, that he was a Yellow Cab driver in New York and he certifies that approximately 22 year and seven months from his statement date, on August 15, 1987, "I picked up [the applicant] from Astoria and dropped off him at JFK airport. So far as I know he was going back to his native country Bangladesh on that day."<sup>7</sup>

Further the applicant has submitted a notarized statement from [REDACTED], made April 4, 2006, that that he was the applicant's roommate in New York from December 1987 to January 1989. On his Form I-687, the applicant indicated he spent nine years in Florida residing at [REDACTED] Boynton Beach, Florida from June 1985 to November 1996 not in [REDACTED]

<sup>5</sup> The applicant spent nine years in Florida residing at [REDACTED] Beach, Florida from June 1985 to November 1996 not in Brooklyn, New York. [REDACTED] did not mention this absence in his statement or he did not provide proof of the affiant's presence in the United States during the statutory period.

<sup>6</sup> The applicant did not identify this employer on his Form I-687. Again, the applicant spent nine years in Florida residing at [REDACTED] Boynton Beach, Florida from June 1985 to November 1996 not in New York.

<sup>7</sup> How [REDACTED] could recollect that event so long ago was not explained but the AAO accepts the applicant's admission that he was absent from the United States for a period that exceeded 45 days according to the record of proceeding (i.e. CIS Form I-678). There is a further indeterminate absence from the United States for the applicant's marriage that took place in Bangladesh on June 17, 1998, according to the applicant's marriage certificate in evidence. According to the CIS interview notes, the applicant indicated he was married by telephone and not present as the certificate would indicate.

Brooklyn, New York. [REDACTED] declaration is inconsistent and contradictory to the applicant's own statements on the CIS Form I-678.

Likewise, the applicant has provided utility bills for charges incurred in New York, during December 1990, July and December 1993, and an apartment lease in New York from August 1, 1991 to July 31, 1993. According to the applicant he spent nine years in Florida residing at 1600 [REDACTED] Boynton Beach, Florida from June 1985 to November 1996 not in New York. There is no explanation for these inconsistent averments.

The petitioner's attempts to rebut his prior inconsistent statement of residence are not credible in the totality of the evidence mentioned above in this case. *See* 8 C.F.R. § 245a.2(d)(6). To meet the burden of proof, the applicant must provide evidence apart from his or her own testimony.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and 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.

Further, at part #32 of the Form I-687 application where applicants were asked to list absences from the United States since entry, the only absence the applicant listed during the requisite period was a trip to Bangladesh in which he departed the United States then returned between August 15, 1987 to October 12, 1987.<sup>8</sup> According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant provided no explanation for the delay in his returning to the United States. There was no assertion by the applicant that the 58-day trip was for emergent reasons. Emergent reasons are defined as "coming unexpectedly into being." *See Matter of C*, 19 I&N Dec. 808 (Comm. 1988). As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

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

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<sup>8</sup> According to the applicant's affidavit made March 26, 2006, in the record of proceeding.