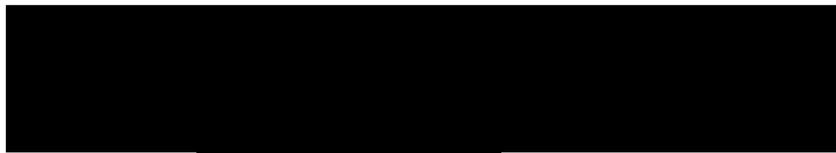




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:

MSC-05-194-11113

Office: NEW YORK

Date: JAN 10 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. 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 director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director noted that during his interview with a CIS officer the applicant stated that he left the United States on June 22, 1987 and did not reenter the United States until August 15, 1987, fifty-four (54) days later. The director found that this statement indicated the applicant did not meet his burden of establishing that he had maintained continuous residence in the United States during the requisite period. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that while he did remain outside of the United States during the requisite period for a period of time that exceeded forty-five (45) days, his absence from the United States was longer than he originally intended due to emergent circumstances as his father died in 1987 while he was absent from the United States.

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 to the Immigration and Naturalization Service (the Service, now Citizenship and Immigration Services or CIS) 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).

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.

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for Temporary Resident Status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 (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 continuously in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 12, 2005. Part #20 of this application asks applicants to list their father's name and indicate whether their father is living or deceased. Here, the applicant showed that his father's name is [REDACTED] and indicated that his father was alive. Part #30 of the Form I-687 application asks applicants to list all residences in the United States since first entry. Here, the applicant showed his address in the United States during the requisite period to be [REDACTED] in Brooklyn, New York from June 1981 until September 1988. Part #32 asks applicants to list all of their absences dating back to January 1, 1982. Here, the applicant showed one absence during the requisite period that occurred between June 1987 and August 1987 when he went to Bangladesh to visit his family. At part #33, where the applicant was asked to list his employment since January 1, 1982, he shows self-employment for the duration of the requisite period. Here, he does not list an address associated with this employment.

The record contains a Form for Determination of Class Membership that is signed by the applicant and dated October 19, 1991. On this form, the applicant showed that he was absent from the United States from June 22, 1987 until August 15, 1987, a period of fifty-four (54) days.

The record also contains two copies of a Form I-687 application submitted by the applicant in 1991 to determine class membership. One copy is dated October 19, 1991 and the other copy is undated. Here, the undated version of that form shows the applicant was absent from the United States from June to August 1987. The copy dated October 19, 1991 shows he was absent in May 1985 when he went to Bangladesh to visit family. On both forms, the information regarding the applicant's father is consistent with that shown on the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreement, as he indicates that his father's name is [REDACTED] and shows that his father is alive.

The record contains an affidavit submitted by the applicant on July 5, 2004 and a sworn statement submitted by him on April 7, 2005, both of which state that the applicant left the United States for Bangladesh to visit his family and was absent from June 22, 1985 until August 25, 1985, a period of sixty-four (64) days. It is noted that dates associated with this absence are not consistent with what the applicant indicated was an absence on any of his Forms I-687.

The record contains a Form I-485 on which the applicant has indicated that he last arrived in the United States on August 25, 1985. That the applicant has not represented dates associated with his entry into or absences from the United States consistently casts doubt on whether the applicant has fully and completely represented his absences on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements.

Also in the record is a Form G-325A, Biographic Information Form, signed by the applicant on April 26, 2002. Here, the applicant showed that he lived in Noakhali, Bangladesh continuously from his date of birth until August of 1985. This casts doubt on whether the applicant first entered the United States on a date before January 1, 1982 and then continuously resided in the United States for the duration of the requisite period.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish that he maintained continuous unlawful residence in the United States for the duration of the requisite period, the applicant submitted the following documents that are relevant to the requisite period:

- An affidavit from [REDACTED] signed and notarized on March 27, 2005. The affiant states that she met the applicant in October 1981 because he worked for her doing construction. The affiant goes on to state that she has personal knowledge of the applicant's addresses. She further states that she did not see the applicant from June 22, 1987 until August 25, 1987. Here, though the affiant states that the applicant worked for her since 1981, she fails to submit evidence as proof that she herself resided in the United States during the requisite period. Further, this affiant has indicated that she did not see the applicant for a period of time that exceeds forty-five (45) days.

Therefore, this affiant indicated that the applicant failed to maintain continuous residence in the United States during the requisite period.

- An affidavit from [REDACTED] who states that he knows that the applicant resided in the United States continuously in an unlawful status since before January 1, 1982. Here, the affiant fails to indicate whether he met the applicant in the United States and if he had regular, ongoing contact with him in the United States during the duration of the requisite period. Though the affiant states that the applicant resided continuously in the United States for the duration of the requisite period, he has not submitted proof that he himself resided in the United States during that time. Because this affidavit is significantly lacking in detail, it can be accorded very little weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] stating that [REDACTED] has known the applicant since December 1981. The letter goes on to say that the applicant used to come to his building to visit one of his friends. Here, [REDACTED] fails to indicate the dates through which the applicant visited this friend. Further, [REDACTED] does not state whether he had regular, ongoing contact with the applicant for the duration of the requisite period. Because of this, this letter is found to be insufficiently detailed to confirm the applicant's continuous residence for the duration of the requisite period.
- A letter from the vice-president of [REDACTED] who states that he has known the applicant since 1981. In this letter, [REDACTED] fails to indicate how he met the applicant or whether he had regular, ongoing contact with him for the duration of the requisite period. Further, [REDACTED] has failed to submit evidence as proof that he himself resided in the United States since 1981 and then for the duration of the requisite period. This letter is found to be insufficiently detailed to confirm the applicant's claim of having resided continuously in the United States for the duration of the requisite period.
- A letter from [REDACTED] stating that he is friends with the applicant. Here, [REDACTED] states that the applicant tried to file for legalization on October 19, 1991 but was rejected because he had visited his family in Bangladesh without the permission of the Service. It is noted here that the original dates for filing for legalization began on May 5, 1987 and ended on May 4, 1988. Therefore, [REDACTED] is asserting that the applicant attempted to file for legalization on a date after the filing period ended. This letter does not indicate whether [REDACTED] personally knows that the applicant resided continuously in the United States for the duration of the requisite period. Because of this, this letter carries no weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] stating that someone named [REDACTED] worked for him. This letter does not pertain to the applicant. It is not clear why he has submitted this affidavit as evidence.
- A notarized letter from [REDACTED] who states that she has known the applicant since 1981. [REDACTED] states that the applicant visited her occasionally. Here, [REDACTED] fails to indicate the frequency of these visits or the dates through which she saw the applicant. Because

of this, this letter is found insufficiently detail to establish that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- A letter from Delight Construction Corporation signed by [REDACTED] stating that the applicant has worked for this company since 1981. This letter fails to indicate whether this information was taken from official company records or how [REDACTED] can confirm the date that the applicant started working for this company. Further, the applicant indicated that he was self-employed on his Form I-687, casting doubt on [REDACTED] claim that the applicant was his employee. Because of this and because no employment records were submitted with this letter, doubt is cast on assertions made in this letter regarding the applicant's employment. Therefore, very little weight can be accorded to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] who claims he has known the applicant since 1981 and that they met while working doing construction work together. The affiant goes on to say that he knows personally that the applicant left the United States from June to August of 1985 to visit his family. Here, the affiant fails to indicate whether he had regular, ongoing contact with the applicant through the duration of the requisite period. Further, this affidavit contains information that conflicts with what the applicant showed on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements, where he indicated that he was absent from the United States from June to August of 1987. This affidavit is found both to be significantly lacking in detail and to conflict with other evidence in the record regarding the applicant's absences. Therefore, this affidavit carries very little weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] who states that he has known the applicant since 1982, when he met the applicant while he was working at a restaurant in Manhattan. It is noted that this affidavit conflicts with information provided by the applicant on his Form I-687, on which he indicated that he was self-employed and performed construction work and with the letter from [REDACTED] in which [REDACTED] indicates that the applicant worked for him in Brooklyn during the requisite period doing construction work. This affidavit is found to be both significantly lacking in detail and to conflict with other evidence in the record regarding the applicant's employment. Therefore, this affidavit carries very little weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

In determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, *supra*.

Here, the affidavits and letters submitted by the applicant are not consistent with information provided by the applicant on his Form G-325A, where he indicated that he lived in Bangladesh until 1985. Two of the affidavits, that from [REDACTED] and that from [REDACTED] contain information that conflict with what the applicant showed as his employment on his Form I-687. Further, the affidavit from [REDACTED] is inconsistent with what the applicant stated on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements regarding the dates of his absences. These inconsistencies cast doubt on the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of a petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since 1981 but that he was absent from the United States for a period of time that exceeded forty-five (45) days. The evidence submitted with the application that is relevant to the 1981-88 period in question is not sufficient to establish by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of that requisite period. Further, the record shows that the applicant has previously submitted forms on which he indicated that he first entered the United States in 1985.

In denying the application the director noted the above, and that at the time of his interview with a CIS officer on July 26, 2005, the applicant stated that he was absent from the United States from July 22, 1987 to August 15, 1987. The record shows that the applicant did not indicate that there were any emergent circumstances that came into being unexpectedly that prevented him from returning in less than forty-five (45) days.

On appeal, the applicant submits a brief in which he states that a few days after his arrival in Bangladesh in June 1987 his father unexpectedly became seriously ill and passed away. The applicant goes on to say that it was necessary for him to perform religious functions pertaining to his father's death and therefore his untimely return from Bangladesh during this absence was the result of emergent circumstances which came unexpectedly into being.

In the absence of any other information, it is concluded that the applicant was absent for more than forty-five (45) days. It is noted that the applicant does not refute this statement in his notice of appeal. As the applicant's absence exceeded the forty-five (45) day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason."

As was previously stated, the applicant has explained that he left the United States to see his father who was ill but that he remained outside of the United States for more than forty-five (45) days after his father unexpectedly passed away during his visit and he had to stay to attend his funeral and perform religious functions for his deceased father. Though this would indicate that the applicant's return to the United States was delayed because of circumstances that came unexpectedly into being, the applicant's statement regarding the date of his father's death conflicts with information he provided on both of his Forms I-687 where he showed that his father was still alive both in 1991 and in 2005. The applicant did not submit any evidence that supports his claim that his father's death occurred during his absence from June 22, 1987 to August 15, 1987 with his appeal, nor did he provide an explanation as to why he would have previously indicated that he was still alive when he signed his most recently submitted Form I-687 on April 7, 2005.

Therefore, though the applicant has stated that the length of time he stayed away from the United States was due to an emergent circumstance, because the explanation for this absence is not consistent with evidence in the record, the credibility of this statement is questioned. Further casting doubt on the applicant's claim of having maintained continuous residence during the requisite period is that he showed on his Form G-325A that he maintained continuous residence in Bangladesh from his date of birth until

1985.

An applicant applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the fact that his claim of residing continuously in the United States conflicts with evidence in the record and because the applicant now claims to have remained outside of the United States due to his father's unanticipated death that occurred during the time of his June 22, 1987 to August 15, 1987 absence when he previously indicated that his father was still alive as of April of 2005, the applicant has not established that he continuously resided in the United States for the requisite period or that his absence during the requisite period came unexpectedly into being.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from individuals that conflict with other evidence in the record. As previously stated, because these statements do not establish that the applicant maintained continuous residence in the United States during that period and because they conflict with other evidence in the record, most notably his Form G-325A, doubt is cast on these attestations. The applicant did not submit any additional evidence to establish that he had maintained continuous residence in the United States with his appeal.

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 statements on his applications 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.