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U.S. Citizenship  
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[REDACTED]

FILE:

MSC-05-231-10167

Office: NEW YORK

Date:

JUL 03 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:

[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, on May 19, 2005 (together, the I-687 Application). 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 noting that the information and documentation “submitted are insufficient to overcome the grounds for denial.” The director denied the application as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a written statement, and two affidavits. On appeal, counsel requests that the decision be reconsidered. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 19, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED], Bronx, New York, from June 1981 to December 1990. At part #33, he listed his first employment in the

United States as a part-time kitchen helper for Purborag Restaurant from September 1981 to December 1988. At part #32, the applicant listed one absence from the United States. The applicant visited Canada from June 1986 to July 1986. At part #31, the applicant did not list any affiliations or associations.

The applicant has submitted many affidavits and letters; a copy of the applicant's passport issued in New York on April 29, 2005; a copy of the applicant's Form I-94 with an entry date of March 19, 2006; a copy of the applicant's United Kingdom visa issued in New York on December 19, 2005; a letter from the Consulate General of Bangladesh dated May 3, 2005 and signed by [REDACTED], Consul stating that the applicant was born on June 12, 1962 in Sylhet, Bangladesh; a photograph without a date or explanation; a lease for May 2004 to April 2005 which includes the applicant's first initial and last name; and a copy of the applicant's employment authorization card issued on August 4, 2005. The applicant's passport, employment authorization card, and letter from the Consulate General of Bangladesh are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The record includes the following witness statements in support of the application:

- **Two affidavits from [REDACTED]** notarized on May 10, 2005 and on August 18, 2006. The declarant states that she entered the United States in October 1977 and that the applicant is "personally known to [her] and [her] family for a very long time." The declarant states that the applicant is "a family friend who visits us from time to time." The declarant adds that "on February 9, 1988, [the applicant] came to [her] house and told [her] that he went to the Immigration and Naturalization office in Manhattan, New York to file his application for legalization under the Late Amnesty Program of 1986. [The applicant] also told [her] that his application for legalization was not accepted by the front desk officer of [the] INS office due to his short absence from the United States after January 1, 1982." The record of proceeding contains a copy of the declarant's certificate of citizenship stating that she became a United States citizen on May 27, 1981. Although the declarant states that he has known the applicant "for a very long time" and mentions a conversation with the applicant on February 9, 1988, the statement does not supply enough details to lend credibility to an at least 17-year relationship with the applicant. The declarant does not indicate when she met the applicant, how frequently she had contact with the applicant, or provide a definition for the words "a very long time." Furthermore, the declarant does not explain how she remembers that her conversation with applicant occurred on February 9, 1988. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- **Two affidavits from [REDACTED]** notarized on May 7, 2005 and on August 18, 2006. The declarant states that he entered the United States on July 31, 1991 and that he

has known the applicant "since childhood." The declarant states that the applicant is "lived with [him] as a roommate at [REDACTED], Astoria, New York." The record of proceeding contains a copy of the declarant's certificate of naturalization stating that she became a United States citizen on July 4, 1997. This affidavit does not provide information regarding the applicant's entry into the United States or residence in the United States during the requisite period. Given these deficiencies, this affidavit has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A notarized letter from [REDACTED] dated May 6, 2005. The declarant states that she has known the applicant "since 1981." The declarant states that the applicant worked at her deceased husband's Indian & Bangladeshi Restaurant in New York, New York as a part-time employee from September 1981 to December 1988. She adds that her deceased husband owned the restaurant and that it closed in December 1988. Although the statement is notarized, the letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement from [REDACTED] does not include much of the required information and can only be accorded minimal weight as evidence supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A notarized affidavit from [REDACTED] dated December 10, 2005. The declarant states that he entered the United States in 1966 and that he has personally known the applicant "since [the applicant's] childhood." The declarant states that the applicant's father is the declarant's cousin and that the declarant used to visit "them now and then at then at the time of [a] birth, death, marriage and other social and cultural events." The declarant also states that the applicant "has been residing in the United States since 1981" and visited him for the first time in July 1981. The declarant adds that since then, the applicant has visited them for family and religious events and they "sometimes meet each other at the community events." The declarant also states that he and the applicant have contacted each other "now and then" over the telephone since 1981. Although the declarant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981 and how he dates his initial acquaintance with the applicant in the United States. The declarant does not indicate the basis of his knowledge that the applicant has been residing in the United States since 1981. Furthermore, the declarant does not specify the periods of time between intermittent contacts with the applicant. Given these deficiencies, this

affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated December 10, 2005. The declarant states that he has been living in the United States “for the last 30 years” and that he has personally known the applicant “for the last 25 years.” The declarant states that the applicant’s father is the declarant’s cousin and that the applicant visited him for the first time in June 1981. The declarant also states that the applicant visits him “now and then” and he and the applicant “always contact each other over the telephone.” The declarant adds that he and the applicant have been visiting each other during “social, cultural and religious events since 1981.” The declarant states that sometimes during their meetings, the applicant talks to him about his “personal life and family matters in Bangladesh.” Although the declarant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. Furthermore, the affidavit does not contain information about contacts with the applicant and about the applicant’s activities that demonstrate definite knowledge of the applicant’s whereabouts for the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized letter from [REDACTED] dated December 4, 2005. The declarant states that he lives in Toronto, Canada and that the applicant is his “best friend.” The declarant states that he has known the applicant since “grade one” in Bangladesh. The declarant also states that in June 1986, the applicant visited him in Toronto, spent a month with him, and then left for New York in mid July. Although the declarant states that the applicant visited him in June 1986, the declarant does not state how he dates the applicant’s visit. Furthermore, this statement does not provide information regarding the applicant’s entry into the United States or residence in the United States during the requisite period. This statement’s evidentiary value is limited to indicating the applicant’s presence in Canada and leaving for New York as stated by the declarant.
- A notarized affidavit from [REDACTED] dated May 7, 2005. The declarant states that he lives in Bronx, New York and that the applicant “lived with [the declarant] at [REDACTED] New York” from “June 1981 to December 1990.” The declarant also states that he has personally known the applicant “for the last 30 years.” Although the declarant states that the applicant lived with him from June 1981 to December 1990, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates the time period during which the applicant lived with him, or how frequently he had contact with the applicant. Furthermore, the declarant

does not provide knowledge about the applicant and his activities that would demonstrate the close association that the declarant claims with the applicant during the requisite period. Accordingly, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated May 10, 2005. The declarant states that he has known the applicant for “the last 30 years” and that the applicant “has been living in the United States since 1981.” The declarant states that “on February 9, 1988, [the applicant] went to the Immigration and Naturalization office in Manhattan, New York to file his application for legalization under [the] Immigration Reform and Control Act of 1986.” The declarant also states that that he “went with [the applicant] on that day” and saw that when the applicant submitted his application, the “INS front desk officer did not accept his application due to [the applicant’s] short absence from the United States after January 1, 1982.” Although the declarant states that he has known the applicant in the United States since 1981 and mentions accompanying the applicant to the Immigration & Naturalization Service office in Manhattan on February 9, 1988, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981 or how frequently he had contact with the applicant. The declarant also does not explain how he remembers that he and the applicant went to the Immigration & Naturalization Service office in Manhattan on February 9, 1988. This affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized letter on Tajmahal Indian Restaurant, Inc. letterhead, dated May 9, 2005, and signed by [REDACTED] owner. Mr. [REDACTED] states that the applicant was employed by Tajmahal Indian Restaurant, Inc. as a food runner from March 9, 1989 to July 21, 1993. Although the statement is on company letterhead and notarized, it fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested. Furthermore, this statement does not provide information regarding the applicant’s entry into the United States or residence in the United States during the requisite period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- Two letters on Domino's Pizza letterhead, dated May 4, 2005 and May 6, 2005, and signed by [REDACTED] manager. Mr. [REDACTED] states that the applicant has been employed by Pizza Hut as a pizza hut since April 1997. Although the statement is on company letterhead, it is not notarized. The statement also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Furthermore, this statement does not provide information regarding the applicant's entry into the United States or residence in the United States during the requisite period. Given these aspects, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States on June 11, 1981 without inspection. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on November 15, 2005 and on March 16, 2006. The director denied the application for temporary residence on July 26, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel requests that the decision be reconsidered and submits two affidavits similar to ones already in the record of proceeding. Neither counsel nor the applicant addresses the director's concerns in her decision. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 the applicant 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.