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FILE: [REDACTED]  
MSC-04-260-10659

Office: NEW YORK

Date: **JUL 18 2008**

IN RE: Applicant: [REDACTED]

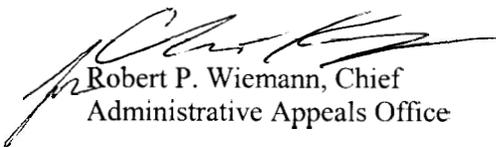
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 issued a Notice of Intent to Deny (NOID) on March 3, 2006. In the NOID, the director stated that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. The director noted that the applicant had submitted affidavits in support of his application and that these affidavits were neither credible nor amenable to verification. The director denied the application on April 2, 2006. The director stated that the applicant had failed to submit additional evidence in response to the NOID and, therefore, the application was denied for the reasons stated in the NOID.

On appeal, the applicant, through counsel, states that he never received the NOID and requests that the application be remanded to the district director. The applicant has also submitted additional affidavits in support of his 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.

As noted above, counsel states that the applicant never received a NOID. However, the record shows that a NOID was sent to the applicant at his address of record at [REDACTED] Astoria, NY 11106. The record shows that the NOID was sent by certified mail and bears a postmark dated March 8, 2006. On the front of the envelope is a “Return to Sender” sticker with “Refused” written on it. “Refused” is also written on the front of the envelope itself. Further, the final decision in this case was sent to the same address on April 2, 2006. The applicant clearly received the April 2, 2006 decision as he included a copy of the decision with his timely-filed appeal. Service is effective upon the mailing of a decision to a person at his last known address. 8 C.F.R. § 103.5a(a)(1). Because the NOID was sent to the applicant at his last known address by certified mail and there is proof of attempted delivery, the NOID was properly served on the applicant.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 16, 2004. The applicant has also submitted two affidavits in which he states that he entered the United States on February 25, 1981 and claims to have resided continuously in the United States since that time.

The applicant also submitted the following affidavits in support of his application:

- Affidavit of [REDACTED] signed and notarized on April 25, 2006. The affiant is the applicant's brother. The affiant states that the applicant left Bangladesh in February 1981 for the United States and that he did not return to Bangladesh again. The affiant does not claim to have personal knowledge of the applicant's residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit of [REDACTED] dated May 29, 2004. The affiant simply states that “the individual whose name and address is mentioned above is well known to the management authority since 1981.” The affidavit does not indicate how the affiant met the applicant, nor does it describe his relationship with the applicant in any detail. The affidavit lacks probative details and therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on February 18, 2006. The affiant states that he and the applicant resided in New York from 1981 until 1989. He also states that he and the applicant departed the United States and went to Canada on December 25, 1986 to be with the applicant’s cousin, who was very ill. The affiant states that he and the applicant returned to the United States on January 14, 1987. The affidavit is lacking in significant details. For example, the affiant does not explain how or when he met the applicant and does not explain the nature and frequency of his contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized February 18, 2006. The affiant states that he knew the applicant from 1981 until 1991, while the affiant was in New York. The affiant states that he and the applicant were roommates during that time. The affiant does not provide the address where he and the applicant allegedly resided during that time, nor does he indicate whether he and the applicant were roommates for all or only a part of that time. The affiant fails to explain how he came to know the applicant or how he dates his initial acquaintance with the applicant. Because this affidavit is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on May 30, 2004. The affiant states that he has known the applicant since 1981. The affidavit lacks details of the affiant’s relationship with the applicant such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and dated May 29, 2004. The affiant states that he has known the applicant since 1981, that he purchased various religious books from the applicant and that he visited the applicant at his home. The affidavit lacks details of the affiant’s relationship with the applicant such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on March 29, 2004. The affiant states that he met the applicant in 1982 and, later, lived with the applicant at [REDACTED]

in Brooklyn, New York. Other than repeating the applicant's addresses as listed on his Form I-687 application, the affiant fails to provide any further information demonstrating personal knowledge of the applicant's residence in the United States at any time. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. *Matter of E-M-*, 20 I&N Dec. at 80. 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 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 applicant's 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 for the requisite period 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