

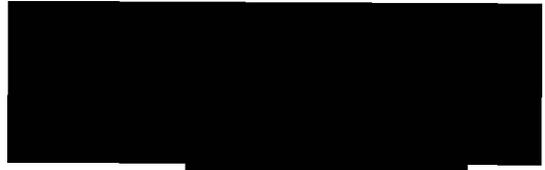
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FILE: [redacted] Office: NEW YORK Date: **JUL 24 2008**  
MSC-05-252-10315

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. 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.

*for* *Michael T. Kelly*  
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 June 9, 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 one affidavits. On appeal, counsel states that the applicant is a CSS/Newman class member. Counsel also states that the director did not provide a reason as to why the applicant’s response to the notice of intent to deny was not sufficient to overcome the grounds for denial. Counsel argues that the evidence submitted warrants further consideration. As of this date, the AAO has not received any additional evidence from counsel or 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. 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. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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 June 9, 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], Jamaica, New York, from October 1981 to January 1989. At part #33, he listed his first employment in the United States as a “door to door” construction job from November 1981 to February 1994. At part #32, the applicant listed two absences from the United States. The applicant visited Bangladesh from September 1, 1987 to September 30, 1987 and from February 2, 1989 to January 29, 1994. 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 on October 13, 1993 and renewed on March 15, 1999; a copy of the applicant’s passport issued on January 13, 2004; a copy of the applicant’s visitor’s visa issued in Dhaka on January 19, 1994; a copy of the applicant’s Form I-94 with an entry date of January 29, 1994; a copy of the applicant’s Form I-94 valid from July 29, 1994 to December 28, 1994; a copy of the applicant’s visitor’s visa issued in Dhaka on January 19, 1994; and a copy of the applicant’s birth certificate. The applicant’s passport and birth certificate 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 following evidence relates to the requisite period:

- A notarized letter from [REDACTED] dated August 16, 2006. The declarant states that he lives in Jamaica, New York and that he has known the applicant “since 1981.” The declarant states that the applicant “has been a very dear friend to [him] for a long time.” The declarant also states that the applicant “usually [went] to [his] store to pay [him] a visit.” Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-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, or how frequently he had contact 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 letter from [REDACTED] dated February 20, 2006. The declarant states that he lives in Brooklyn, New York and that he has known the applicant “since 1981.” The declarant states that “being a scholar of religion,” he and the applicant occasionally celebrate Islamic programs together. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-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, or how frequently he had contact 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 letter on Islamic Council of America Inc. Madina Masjid letterhead dated February 9, 2006 and signed by [REDACTED], general secretary. The declarant states that he has personally known the applicant "since 1984." The declarant states that he met with the applicant while the applicant "prayed his Jumma prayer (Friday prayer) in the Madina Masjid." The declarant also states that the applicant occasionally "celebrated Muslim holidays in the Masjid." The letter fails to conform with regulatory guidelines in that it does not state the address where the applicant resided during the membership period, establish how the author knows the applicant, or state the origin of the information provided. *See* 8 C.F.R. § 245a.2(d)((3)(v). Also, the AAO notes that this affiliation was not included in the applicant's Form I-687. Given these deficiencies, the letter 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 form-letter "Affidavit of Witness" from [REDACTED] dated May 13, 2005. The declarant states that she lives in Richmond Hill, New York and that she has been living in the United States since 1980. The declarant states that she has known with the applicant since 1981 as a "friend." The declarant also states that she first met the applicant at "Jackson Heights, New York." Although the declarant states that she has known the applicant 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 she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Also, the applicant provides no specific information about the applicant's residence and whereabouts. 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 form-letter "Affidavit of Witness" from [REDACTED] dated May 16, 2005. The declarant states that he lives in Astoria, New York and that he has been living in the United States since 1979. The declarant states that he has known the applicant since "October 1981." The declarant also states that he first met the applicant at "12<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Manhattan, New York." Although the declarant states that he has known the applicant 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, how frequently he had contact with the applicant and the factual basis of whatever "personal knowledge" he has about the applicant's residence during the period addressed in the document. 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 form-letter affidavit from [REDACTED] dated May 13, 2005. The declarant states that he lives in Astoria, New York and that he has personal knowledge that the applicant resided at [REDACTED], New York, New York from February 1985 to February 1989. The declarant also states that “the longest period during the residence described in which [he has] known of the applicant is 2 years 11 months.” Although the declarant states that he has known the applicant 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, how frequently he had contact with the applicant, and the factual basis of whatever “personal knowledge” he has about the applicant’s residence during the period addressed in the document. 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 form-letter “Affidavit of Witness” from [REDACTED] dated May 12, 2005. The declarant states that he lives in Jamaica, New York and that he has been living in the United States since 1981. The declarant states that he has known with the applicant since 1982 as a “friend.” The declarant also states that he first met the applicant “downtown near 6<sup>th</sup> Street.” Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Nor does the declarant provide any specific information about the applicant’s residence and whereabouts during the period addressed in the document. 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 form-letter affidavit from [REDACTED] dated May 17, 2005. The declarant states that she has personal knowledge that the applicant resided at Jamaica – Queens, New York from October 1981 to January 1985. Although the declarant states that she has known the applicant 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 she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Nor does the declarant provide any specific information about the applicant’s residence and whereabouts during the period addressed in the document. 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 May 17, 2005. The declarant states that she lives in Jamaica, New York and certifies that she personally knows the applicant. The declarant states that the applicant was her “roommate from October 1981 through January 1985.” Although the declarant states that the applicant was her roommate from October 1981 through January 1985, 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 she met the applicant in 1981, how she dates the time period during which the applicant lived with her, or how frequently she had contact with the applicant. Given these deficiencies, 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 declaration from [REDACTED]. The declarant states that he lives in Astoria, New York and first entered the United States in 1979. The declarant states that he first met the applicant on or about October 27, 1981 at 12<sup>th</sup> Street and 2<sup>nd</sup> Avenue in Manhattan. The declarant also states that the applicant told him that he entered the United States by illegally crossing the Mexican border. The declarant included a copy of his New York driver's license issued on February 24, 2003. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a more than 22-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, or how frequently he had contact 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.

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 August 16, 1981 without inspection. In a notarized statement dated May 16, 2005, the applicant states that he has only departed once from the United States and that he has not been out of “this country from more than 45 days.” This statement contradicts the information provided by the applicant on the Form I-687 and in a sworn statement signed on October 28, 2005. In these documents, the applicant included two absences from the United States, one of which lasted almost 5 years. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. In this case, his assertions regarding his entry are not supported by credible and probative evidence in the record.

The director issued a notice of intent to deny (NOID) on January 24, 2006. In her NOID, the director indicated that evidence in the record of proceeding which relates to the applicant's Form I-360, Petition for Amerasian, Widow or Special Immigrant indicate that the applicant was in Bangladesh from at least 1986, four years prior to taking his final examination at the Bahubol Quashimul Ulum Madrasah in 1989. A letter signed by [REDACTED], principal of the madrasah, states that the applicant "was a student of [REDACTED] in 'Hafizul Quran Group' from 1986 to 1989." Another letter dated December 10, 1993 signed by [REDACTED] states that the applicant "passed the final examination in the second division in the year 1989." A letter dated January 10, 1993, but stamped March 28, 1994 and signed by [REDACTED] president of Barchar Jami Mosque Committee in Bangladesh, states that the applicant "has been performing the regular job of Imam (Piarist) in our mosque for the last 5 years since October 1989." In his response to the director's NOID dated February 21, 2006, counsel did not address the conflicting information from the applicant's I-360 petition. This unresolved conflict calls into questions the credibility of the application.

The director denied the application for temporary residence on July 28, 2006. In her decision, the director restated her concerns regarding the conflicting information in the record of proceeding. 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 states that the applicant is a CSS/Newman class member. Counsel also states that the director did not provide a reason as to why the applicant's response to the notice of intent to deny was not sufficient to overcome the grounds for denial. Counsel argues that the evidence submitted warrants further consideration. Neither counsel nor the applicant addresses the director's concerns regarding the Form I-360 documents in the record of proceeding. 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.