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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-05-348-17697

Office: NEW YORK

Date: JUN 09 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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, in her Notice of Intent to Deny (NOID), the director noted that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that he left the United States in December of 1986 and returned in February of 1987. The director stated that because the applicant could not remember the exact dates of this absence, he failed to meet his burden of establishing that he maintained continuous residence in the United States for the duration of the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Though the applicant submitted a response to the director's NOID, he did not do so within the 30 days allowed him. Further, the director noted that her office found the evidence he did submit, a statement he made asserting that he was absent from the United States for less than 45 days, was self-serving. The director found the applicant failed to meet his burden of proof. Therefore, she found he was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied his application.

On appeal, the applicant asserts that his response to the director's NOID was delayed because he was undergoing medical treatment for severe depression at the time he received the NOID. He submits an additional affidavit attesting to the length of his absence during the requisite period.

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) 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).

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 applicant 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."

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 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 applicant 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 September 13, 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 address in the United States during the requisite period to be [REDACTED] in New York, New York from October 1981 until November 1988. At part #31 where the applicant was asked to list all organizations of which he was a member, he did not indicate that he was a member of any organizations. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period. Here, he stated that he went to Bangladesh to see a sick parent from December 1986 until February 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was self-employed doing construction work from 1987 until the date he submitted his Form I-687. It is noted here that the applicant was born in 1970. Therefore, he would have been a minor until 1988.

Also in the record is a G-325A Biographic Information Form signed by the applicant on February 7, 2002 and filed with a Form I-485, Application to Register Permanent Resident or Adjust Status. Here, the applicant indicated he resided in Noakhali, Bangladesh from his date of birth until April 1999. This casts doubt on the applicant's claim of having resided in the United States during the requisite period.

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

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions

or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted the following as evidence to support his claim that he resided in the United States for the requisite period:

- An affidavit from [REDACTED] that was notarized on August 27, 2005. In this affidavit, the affiant states the applicant resided with him from October 1981 until November 1988. The affiant does not state how he met the applicant or whether he first met him in the United States. He does not explain how the applicant, who was 11 years old in 1981, came to live with him. He states that the applicant's parents sent money to him toward rent and utility expenses but does not indicate whether he was responsible for the applicant or whether there was another adult who cared for him. He does not indicate whether the applicant attended school during the requisite period. He indicates that all bills were in his name but fails to submit any examples of such bills. Although not required to do so, he fails to submit proof that he himself resided in the United States during the requisite period. Because this affidavit is significantly lacking in detail, it carries little weight as proof that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on September 1, 2005. Although not required to do so, this affiant submitted a photocopy of his New York driver's license with his affidavit. In this affidavit, the affiant states he personally knows the applicant resided in Brooklyn from September 1981 until the date he signed his Form I-687. He further states that the longest period of time that he has not seen the applicant for was for three years and nine months. However, he does not indicate when these three years and nine months occurred or whether it was during the requisite period. It is noted that the applicant indicated on his Form I-687 that he resided in Manhattan rather than in Brooklyn during the requisite period. The affiant also fails to indicate how he met the applicant, who was an 11 year old boy in 1981 when he claims to have met him. He does not indicate where he first met the applicant or whether he first met him in the United States. Therefore, this affidavit carries minimal weight as proof that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on September 1, 2005. Although not required to do so, the affiant submitted a photocopy of his New York Driver License with his affidavit. The affiant states that he personally knows the applicant resided in Jackson Heights, New York from October 1986 until the date he signed his affidavit. It is noted here that Jackson Heights is a neighborhood in Queens, New York. This applicant has indicated that he has lived in both Manhattan and in Brooklyn, but never in Queens. This affiant stated that the longest period of time that he has not seen the applicant for was

five years and three months. However, he did not indicate when this period of time occurred or whether it occurred during the requisite period. Because this affidavit is not consistent with the applicant's address of residence during the requisite period provided on the applicant's form I-687 or in other affidavits in the record and because this affidavit is significantly lacking in detail, it carries minimal weight as proof that the applicant resided in the United States during the requisite period.

- Affidavits from [REDACTED] and [REDACTED] that were notarized on August 28 and 29, 2005 and September 2, 2005, respectively. Here, the affiants state that they personally know that the applicant resided in Brooklyn, New York subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to prove he resided in the United States during the requisite period. As these affidavits contain testimony regarding his residence subsequent to that period, this evidence is not relevant to this proceeding.
- The director issued a NOID to the applicant on March 14, 2006. In her NOID, the director stated that the applicant was not able to provide the exact dates of his absence from the United States during the period from December 1986 until February 1987. The director found this indicated that the applicant did not meet his burden of establishing that he maintained continuous residence and continuous physical presence during the requisite period as defined above. The director also noted that the Form G-325A in the record indicated that the applicant resided in Bangladesh continuously from his date of birth until 1999. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

On August 9, 2006, in response to her NOID, the applicant submitted the following additional documentation:

- A letter from the applicant dated August 6, 2006. In this letter, the applicant states that he was undergoing medical treatment at the time he received his NOID. He requests that the director consider his response to her NOID in spite of it being untimely because he was unable to function as usual while he was undergoing this treatment. He further states that his absence during the requisite period was from December 20, 1986 until February 3, 1987, which the AAO notes constitutes an absence of 45 days. He reiterates that he believes he is eligible to adjust to Temporary Resident Status but states that he did not retain evidence that would prove his residence in the United States during the requisite period because he has changed residences many times since the end of that period.
- A letter from the Bangladesh Society signed by [REDACTED] and dated August 3, 2006. It is noted here that in part #31 of the applicant's Form I-687 where he was asked to list all of the organizations of which he was a member, he did not indicate that he was a member of any organizations. This letter states that the applicant is a regular member of this society and has paid his dues regularly. He states that according to the records maintained by the

society, the applicant applied for membership in the society in 1981 and became a member of the society that same year. It is again noted here that the applicant would have just turned 11 years old in October 1981, which is when he indicates he entered the United States. The letter goes on to say that the applicant takes part in activities in the Society. However, this letter does not indicate the frequency with which the applicant took part in these activities during the requisite period. It further fails to indicate whether an adult responsible for the applicant was with him during these activities. Further, this letter states that the applicant was a member of a society he did not indicate he was affiliated with on his Form I-687. Because this letter is significantly lacking in detail and because it is not consistent with what the applicant showed on his Form I-687, this letter carries little weight as proof that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] dated August 3, 2006. In this letter, [REDACTED] states that the applicant was suffering from depression as a result of his father's death on March 26, 2006. This doctor goes on to say that this depression lasted from March 26, 2006 until April 20, 2006.
- A declaration from [REDACTED] that was notarized on August 8, 2006. Although not required, he submits a photocopy of his New York Stated Identification Card with his declaration. Here, the declarant states that he knew the applicant in Bangladesh and that he met the applicant immediately after he came to the United States. He states he referred the applicant to different places to work and supported him financially when he needed assistance. It is noted that the applicant did not indicate that he was employed until 1987 on his Form I-687. It is also again noted that the applicant, whose birthday is October 1, 1970, would have just turned 11 years old when he entered the United States in October 1981. Here, the affiant fails to indicate whether he was responsible for the applicant's well being during the requisite period or if there was another adult caring for him. He fails to provide details of the types of work he helped the applicant to find or to indicate when the applicant was working or how he obtained work as a minor.

The director denied the application for temporary residence on August 20, 2006. In denying the application, the director noted that her office received additional evidence from the applicant in response to her March 14, 2006 NOID. Though this evidence was untimely, she did consider it. She stated that the evidence the applicant submitted was not sufficient to overcome her reasons for denial.

On appeal, the applicant resubmits his response to the director's NOID, and also submits new evidence as follows:

- A statement from the applicant that is dated September 3, 2006. In this statement the applicant reasserts that he was absent for 45 days during the requisite period. He again states that his response to the director's NOID was delayed because he was undergoing

treatment for an illness. He further states that he was not able to reply to that NOID sooner because he was not able to obtain a letter from his doctor until August of 2006.

- A declaration from [REDACTED] that was notarized on September 5, 2006. In this letter, [REDACTED] states that the applicant's absence from the United States was from December 20, 1986 until February 3, 1987, a period of 45 days. He also states that the applicant came to him immediately upon arriving in the United States and that he was in contact with the applicant all of the time. However, here, the declarant again fails to indicate whether he was responsible for the applicant's well being or if there was another adult caring for the applicant, who remained a minor for the duration or the requisite period. Though he indicates he saw the applicant all of the time, he does not specify the frequency with which he saw the applicant, nor does he indicate where he saw the applicant or provide details of his relationship with him. Because this declaration is significantly lacking in detail, it can be afforded little weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, the applicant has provided documentation that is significantly lacking in detail as proof that he resided continuously in the United States during the requisite period. He has not submitted any documentation from an adult who was responsible for his well-being though he claims to have begun residing in the United States at age 11. Further, the applicant submitted a G-325A Biographic Information Form to CIS in which he stated that he resided continuously in Bangladesh until April 1999. This casts doubt on the applicant's claim of having resided in the United States for any part of the requisite period.

The director found the applicant's assertion that he was absent for exactly 45 days during the requisite period caused him to be ineligible to adjust to temporary resident status. It is noted here that a single absence of 45 days during the requisite period alone would not cause an applicant to be ineligible for this benefit. However, this applicant indicated on his G-325A Biographic Information Form that he did not enter the United States until April 1999. Therefore, doubt is cast on the applicant's assertion that he maintained continuous residence in the United States for the duration of the requisite period. Though the applicant has provided details regarding the dates of his claimed absence from the United States during the requisite period, these details are not consistent with what the applicant indicated to be his residence on his G-325A Biographic Information Form. This causes the applicant to fail to meet his burden of proving that he resided in the United States for the duration of the requisite period.

In this case, the absence of credible 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 regarding the applicant's residence for the duration of the requisite period, 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 given that affidavits and declarations he submitted were

significantly lacking in detail, particularly with regards to who was caring for him during the requisite period when he was a minor, 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.

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