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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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[Redacted]

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FILE: [Redacted] Office: NEW YORK Date: JUN 26 2008
MSC 04 338 10328

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:

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.

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, 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) on September 2, 2004. The applicant was interviewed on March 20, 2006. The director issued a Notice of Intent to Deny (NOID) the application on June 19, 2006. The director denied the application on September 18, 2006.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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).

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. •

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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application. On the Form I-687, the applicant lists her date of birth as February 2, 1968. She indicates she last entered the United States on June 18, 1987 with a visa. The applicant lists her addresses for the pertinent time period as: [REDACTED] Bronx, New York from December 1981 to April 1986 and [REDACTED] Bronx, New York from May 1986 to December 1988. The applicant does not indicate that she belongs to any organization and indicates she left the United States in April 1987 and returned to the United States in June 1987. She indicates that she has been self-employed as a cake maker in her home since 1982.

The applicant also provided her sworn affidavit dated August 29, 2004. In her affidavit, the applicant declares that she first entered the United States in December 1981 with a visa. She declares that she left the United States on April 26, 1987 to see her ill mother and returned to the United States on June 18, 1987, an absence of 52 days. The applicant confirms this absence in her March 20, 2006 interview. The applicant also declares that she left the United States in January of 1993 with her mother and returned to the United States with a visitor's visa in August 1995. The applicant further declares that at no time has she been out of the United States for more than 45 days.

The record also contains a letter written on the Consulate General of Bangladesh letterhead, dated November 14, 1993, signed by the Vice Consul of the Bangladesh Consulate with a seal. The letter certifies that the applicant's date of birth as recorded in her Passport No. [REDACTED] issued at New York on March 10, 1987, is February 2, 1968. The record also contains pages of a passport showing that the applicant received a passport in New York on August 26, 1996 from the Consulate of Bangladesh.

The record further contains an affidavit written on the letterhead of the Bangladesh Society Inc. in New York certifying that the applicant has been an active member of the organization since 1982. It is signed

by Syed Nuruzzaman as a witness who is also identified as the Secretary of the Bangladesh Society, Inc. of New York.

The record contains five affidavits:

- An affidavit dated July 3, 2004 signed by [REDACTED] who declares that the applicant is personally known to him since 1982 and that he first met her in the rented house of one of his relatives in January 1982 and that they shared an apartment on [REDACTED] e. He states that the longest he has not seen the applicant is from April 26, 1987 to June 18, 1987.
- An affidavit dated July 8, 2004 signed by [REDACTED] who declares that the applicant residing at the Woodside, New York address has been acquainted with him since 1981 "as she was his neighbor since that time."
- An affidavit dated May 9, 2004 signed by [REDACTED] who declares that he has known the applicant since 1981 and that the applicant entered the United States before January 1, 1982 and has been residing unlawfully in the United States except for a short absence.
- An affidavit dated July 16, 1990 signed by [REDACTED] who declares that the applicant is well known to him since 1981.
- An affidavit dated May 2, 1991 signed by [REDACTED] who declares that the applicant is his distant relative and that the applicant entered the United States before January 1, 1982 and has been residing continuously in the United States in an unlawful manner except for a brief absence.

The director denied the application on September 18, 2006. The Citizenship and Immigration Services' (CIS) officer noted in the decision that the applicant's interview had been conducted with the assistance of a Bengali interpreter and that it was not credible that the applicant could not communicate in the English language if she had been in the United States since she was thirteen. The CIS officer found that the applicant's absence from the United States in 1987 was over 45 days and thus was not a brief absence. The CIS officer found that the affidavits submitted were not probative as they did not include identify documents and did not contain proof that the affiants were in the United States during the requisite time period. The CIS officer concluded that the applicant had not demonstrated her residence in the United States.

On appeal, the applicant states that a Bengali interpreter had been offered to her and she did not see the harm in using an interpreter even though she did not need an interpreter. The applicant indicates that her original application was handwritten and that the typewritten version contained a typographical error regarding her absence from the United States in 1987. She asserts on appeal that she left the United States on April 26, 1987 and returned on June 8, 1987 (not June 18, 1987 as stated in her typed affidavit of August 29, 2004 and as indicated in her handwritten class membership statement of May 17, 1993, and in her Form I-687 which states June 18, 1987 as the date of her last entry into the United States) and thus was absent from the United States for only 44 days. The applicant again states that she entered the United

States in December 1981 on a legal visa and that the submitted affidavits were from her father's friends and now that her father is deceased, she cannot locate these individuals.

The record is insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful presence in the United States for the requisite time period. The AAO has reviewed the submitted affidavits and does not find them probative. The affidavits contain only general information. The affidavits do not contain the detail of the circumstances and events surrounding the affiants' and the applicant's acquaintance. The affidavits do not disclose concrete detail of how the affiants met the applicant or of interactions subsequent to meeting the applicant. The AAO finds the absence of detail surrounding the circumstances of the affiants' relationship with the applicant detracts from the probative value of these documents. These documents do not assist in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period.

The AAO has also reviewed the affidavit written on the letterhead of the Bangladesh Society Inc. in New York certifying that the applicant has been an active member of the organization since 1982. The AAO notes that this affidavit conflicts with item 3 of the applicant's Form I-687 which does not list this organization. Moreover, the affidavit also lacks the essential corroborative details that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) specifies for letters of attestation from religious organizations with regard to proof of an applicant's residence: inclusive dates of the applicant's membership; the applicant's address(es) during membership; establishment of how the author knows the applicant; and establishment of the origin of the information being attested to.

The AAO also finds the applicant's revision of the dates she left the United States and returned to the United States not credible. The information in the record consistently indicates that the applicant returned to the United States on June 18, 1987 after leaving the United States on April 26, 1987; the applicant's change of this date only on appeal undermines her credibility. 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. *See e.g. Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The information in record reveals inconsistencies in the applicant's testimony regarding her claim and the documents submitted are insufficient to establish the applicant's entrance into the United States prior to January 1, 1982 and unlawful residence in the United States for the requisite time period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the requisite period and the applicant's inconsistent statements regarding her continuous residence in the United States detract from the credibility of her 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 and the applicant's reliance upon deficient documents, it is concluded that the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the

United States 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. The appeal will be dismissed.

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