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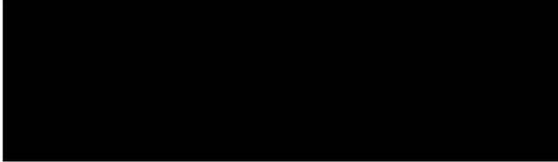
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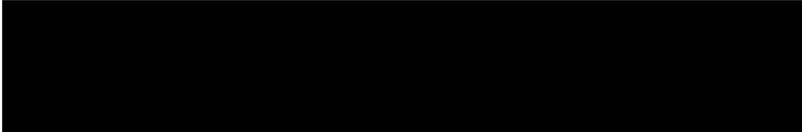
Date: **MAR 24 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status. On appeal, counsel asserted that the director failed to adequately consider all of the evidence.

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). 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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record contains

- the applicant’s own affidavit, dated February 16, 2006,
- a letter dated July 28, 2004 from the Vice Consul of Bangladesh,
- photocopies of several pages of the applicant’s Bangladeshi passport,
- a landlord’s form affidavit dated August 11, 2004,
- two other August 11, 2004 form affidavits,
- a Form G-325A Biographic Information form that the applicant signed on August 24, 2004,

The record contains no other evidence pertinent to the applicant’s presence in the United States during the salient period.

The Bangladesh Vice Consul’s July 28, 2004 letter states that the applicant’s date of birth is July 25, 1972 and that his parents are [REDACTED] and [REDACTED]. The photocopied pages of the applicant’s passport also state that the applicant was born on July 25, 1972.

The landlord’s August 11, 2004 form affidavit is from [REDACTED]. The body of the affidavit states, in its entirety,

This is to confirm that [REDACTED] used to live in my apartment located at \_\_\_\_\_. Since January 1982 through \_\_\_\_\_. [REDACTED] used to pay \$350 per month. His rents are up to date.

The address [REDACTED] Bronx, New York was entered in the first blank space. The second space was left blank.

Although that affidavit purports to show that the applicant began living at that address during January 1982, it does not state when he ceased to live there. Further, this office finds curious that the applicant's name, the month the living arrangement began, and the amount of his rent were preprinted on that form affidavit, although the address and the month the living arrangement was terminated were not.

The other August 11, 2004 form affidavits are from [REDACTED] and [REDACTED]. The body of those affidavits reads,

I \_\_\_\_\_ presently residing at \_\_\_\_\_ do hereby affirm and state as follows:

I am a citizen of the United States of America. I have been living in this country since \_\_\_\_\_.

Mr. \_\_\_\_\_ has been known to me since \_\_\_\_\_ as \_\_\_\_\_

I first meet [sic] Mr. \_\_\_\_\_ at \_\_\_\_\_

In that form, the affiants filled in their names and addresses and stated how long they have lived in the United States, one since 1981 and one since 1982. They did not state whether they know the applicant has been continuously in the United States, or for how long, or where they first met. Those affidavits are of no value in demonstrating the applicant's continuous residence or continuous physical presence in the United States during any period.

In a Notice of Intent to Deny (NOID), dated January 23, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States in the requisite period.

The director stated that in January 1982, when the landlord's affidavit stated that the applicant first started paying \$350 per month in rent, the applicant was 11 years old. In fact, during January 1982, the applicant was approximately nine and one-half years old.<sup>1</sup> The director granted the applicant thirty days to submit additional evidence.

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<sup>1</sup> Although the applicant's age does not conclusively demonstrate that he could not have entered the United States during December of 2001 and secured employment and living quarters, it is sufficiently unlikely to raise questions about the veracity of the applicant's claim.

In response counsel submitted the applicant's February 16, 2006 affidavit. Counsel also stated that he was submitting affidavits from [REDACTED] and [REDACTED]. Those affidavits are not in the record.

In the Notice of Decision, dated August 1, 2006, the director denied the application based on the applicant's failure to demonstrate his continuous residence in the United States since before January 1, 1982.

On appeal, counsel argued that the director should have considered the affidavits of [REDACTED] and [REDACTED] and that, with that evidence included, the record supports the applicant's claim of continuous residence in the United States since January 1, 1982.

This office notes that, notwithstanding counsel's assertion, those three affidavits were apparently never submitted and are not now in the record.

The issue in this proceeding as stated in the decision of denial is whether the applicant has demonstrated by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status during the requisite period.

The applicant has provided incomplete and contradictory histories of his residence and employment in the United States.

On his August 23, 2004 G-325A Biographic Information form, the applicant stated that his last address outside the United States was in Dhaka, Bangladesh. The applicant left blank the space where he was required to state when he had lived there.

On both the Form I-687 and the Form G-325A, the applicant stated that he lived (1) at [REDACTED] Long Island City, New York, from December 1981 to June 1989, (2) at [REDACTED] Long Island City, New York, from June 1989 to January 2000, and (3) at [REDACTED] in the Bronx, New York, from December 2001 to Present Time (August 23, 2004).

This office notes that this residential history does not state where the applicant lived from February 2000 to November 2001.

In his February 16, 2006 affidavit the applicant stated that he lived (1) at [REDACTED] Long Island City, New York, from December 1981 to April 1989, (2) at [REDACTED] Long Island City, from April 1989 to September 1998, (3) at [REDACTED] Bronx, New York, from September 1998 to October 1999, (4) at [REDACTED] Bronx, New York, from October 1999 to June 2003, and (5) at [REDACTED] Bronx, New York, from June 2003 to Present (February 16, 2006).

The applicant's February 16, 2006 affidavit states that the applicant moved from [REDACTED] to [REDACTED] during April of 1989, whereas the applicant stated, on the Form I-687 and the Form G-325A, that he moved during June of 1989. Further, the February 16, 2006 affidavit states that the applicant

moved from [REDACTED] during September 1998, whereas Form I-687 and Form G-325A state that the applicant remained there until January 2000.

Although the February 16, 2006 affidavit states that the applicant lived on [REDACTED] and [REDACTED] in the Bronx from September 1998 until June 2003, those addresses were not mentioned in the Form I-687 or the Form G-325A. That affidavit states that the applicant moved from there to [REDACTED] during June 2003, although the Form I-687 and Form G-325A indicate he had already been living there since December 2001.

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 application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). That the applicant has provided such divergent accounts of his residential history raises the issue of the reliability all of his assertions and all of the evidence in this matter.

On the Form I-687 application the applicant stated that he was employed as a construction worker from December 1981 to April 1990,<sup>2</sup> and worked in a newsstand from April 1990 to Present (August 31, 2004).

On the Form G-325A, the applicant was also required to list his employers over the last five years. The applicant left blank the spaces where he was required to provide that information, thus indicating that he had not worked since August 23, 1999. This conflicts with the applicant's assertion, on the Form I-687, that he worked at a newsstand from April 1990 until at least August 31, 2004.

Further, in his February 16, 2006 affidavit the applicant stated that he worked as a cashier for [REDACTED] in Grand Central Station from December 1981 to March 1990, whereas previously stated, on the Form I-687, that he was a construction worker from December 1981 to April 1990.

Further still, reference to a website maintained by the New York Department of State ([http://appsext8.dos.state.ny.us/corp\\_public/corpsearch.entity\\_search\\_entry](http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry), accessed February 28, 2008) indicates that [REDACTED] filed for incorporation on January 22, 1990, and the applicant could not have been employed by that company beginning in December 1981.

In order to determine whether the applicant resided continuously and was physically present in the United States beginning before January 1, 1982 this office must be provided with a reliable history of the applicant's entry into the United States and his residence and employment in the United States during the salient period. The applicant's has not submitted a single version of his residential history

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<sup>2</sup> As was stated above, during December 1981, when he claims to have commenced working in construction, the applicant was approximately nine and one-half years old

and a single version of his employment history. Rather, the applicant has provided various contradictory versions of his residential and employment history. Consistent with *Matter of Ho, Id.*, this office now requires independent objective evidence to reconcile the discrepancies and contradictions, rather than mere feasible explanations and more revised histories.

The record contains no contemporaneous evidence to demonstrate that the applicant was in the United States at any time during the salient period, from January 1, 1982 through December 31, 1987, let alone that he resided in the United States continuously during that period. The record contains no evidence pertinent to the applicant's employment, other than his own assertions. Other than the applicant's assertions, the only evidence in the record ostensibly pertinent to the applicant's continuous residence and continuous physical presence in the record are the three affidavits provided. Two of those affidavits are not, in fact, relevant, because they contain no statements pertinent to the applicant's residence or presence in the United States at any time.

The remaining affidavit, the only evidence in the record beyond the applicant's own assertions, is the August 11, 2004 affidavit that purports to be from the applicant's landlord. The assertions in that letter pertinent to the applicant's presence and residence when he was nine and one-half years old are not credible for the reasons discussed above, and are called into further question based on the discrepancies and contradictions in the record.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 from prior to January 1, 1982, through December 31, 1987.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 paucity of credible supporting documentation he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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 application was correctly denied on that ground, which has not been overcome on appeal.

The record reflects an additional issue not discussed in the decision of denial.

As set out above, the applicant is obliged by section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1) to demonstrate that he was continuously physically present in the United States from November 6, 1986 until he filed his application. The applicant's assertions and evidence are ineffective for that purpose for the same reasons that they were insufficient to show that the

applicant continuously resided in the United States during the requisite period. The applicant has made various contradictory claims about his residential and his employment history, has failed to produce evidence sufficient to support any of them, and has failed to provide the objective evidence required by *Matter of Ho*, 19 I&N Dec. 582 to reconcile the inconsistencies and contradictions. The applicant has failed, therefore, to demonstrate his continuous presence in the United States from November 6, 1986 until he filed his application as required by section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1). The application should have been denied on this additional basis of ineligibility, which has not been overcome on appeal.

On appeal, a decision shall be affirmed if the result is correct, notwithstanding that the decision from which the appeal was taken relied upon an incorrect basis or a wrong reason. *Securities and Exchange Commission v. Chenery*, 318 U.S. 80, 88 (1943) citing with approval *Helvering v. Gowran*, 302 U.S. 238, 245. “On appeal from or review of [a] decision, the agency [rendering the appeal or review] has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. 5 U.S.C. § 557(b). See also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989), which notes that the AAO reviews appeals on a de novo basis. The policy of this office is that it follows that this office may rely on any basis of ineligibility that appears in the record, even if it was not relied upon in rendering the decision denying the application from which the appeal was taken.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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