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[Redacted]

FILE: [Redacted]
MSC 05 131 11814

Office: NEW YORK

Date: MAY 01 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:

[Redacted]

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 [or Records] 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.


Robert P. Wiemara, 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, and 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, the director commented on the documentation submitted, concluding that 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, the applicant disputes the director's findings and submits a brief explaining the basis for his assertions.

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 Immigration and Nationality Act (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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 petitioner 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that the applicant has submitted the following documents in support of his claim:

1. A letter dated May 7, 2004 signed by [REDACTED] president of Bangladesh Society, Inc. who provided the address where the applicant purportedly resided at the time the letter was written and stated that the applicant was an active member of the organization from 1981 to 1989 according to the organization's records. However, according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations should also include the applicant's address where he was purportedly residing during his membership in the organization. In the letter submitted, this relevant information was not included. Additionally, the information provided in this letter is inconsistent with the information provided by the applicant in No. 31 of his Form I-687 where he stated that he was a member until July 1988. In fact, in No. 32 of the same Form I-687, the applicant further stated that he left the United States to return to Bangladesh permanently in August 1988. Therefore, by the applicant's own account, he could not have been an active member of Bangladesh Society, Inc. in 1989 as claimed by [REDACTED]. 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). In the present matter, the organization's records have not been provided in an attempt to resolve the inconsistency described herein. As such, [REDACTED] letter will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

2. Two employment letters signed by [REDACTED], who identified himself as a foreman at Gemro Restoration Construction. In the first employment letter, dated May 28, 2004, [REDACTED] claimed that the applicant worked for this company from August 1981 to June 1984 at a rate of \$32-\$40 per day and further claimed that the applicant resided at the company's dormitory during the dates of his employment. Although information was provided about the applicant's salary at the time of the alleged employment, [REDACTED] stated that the information was based on his personal recollection rather than a review of company records. In the second letter, which was dated September 26, 2005, [REDACTED] provided the same information regarding the applicant's residence and dates of employment. However, with regard to the applicant's wages, Mr. [REDACTED] stated that the applicant earned \$28-\$32 per day. While this inconsistency in Mr. [REDACTED]'s recollection of the applicant's wages may be harmless error, it suggests that information provided on the basis of memory may be unreliable with regard to other, more significant facts pertaining directly to the issue of the applicant's residence. As no employment records have been provided to substantiate either of [REDACTED]'s letters, the claims made by him will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

3. A letter dated June 4, 2004 signed by [REDACTED] who identified himself as president of Style Painting & Home Improvement, Inc. Mr. [REDACTED] provided the address where the applicant resided at the time the letter was written and claimed that the applicant worked for his company from August 1984 to July 1988 at a pay rate of \$40 per day. According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) letters from employers must include: (1) the alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In this letter, [REDACTED] did not discuss the applicant's duties, nor did he indicate whether he obtained the information from company records that may be reviewed by Citizenship and Immigration Services (CIS). As such, this employment letter may be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

On September 1, 2005, the director issued a notice of intent to deny (NOID) informing the applicant that sufficient documentation had not been submitted to merit approval of the application. While a review of the record suggests that the notice was warranted, the AAO notes that several of the director's comments were erroneous. First, the director made an adverse finding regarding the applicant's failure to provide proof documenting his alleged unlawful entry in 1981. Contrary to the director's misstatement, no alien can be expected to provide documentary evidence establishing his or her unlawful entry. Such an expectation is unreasonable. Second, the director referred several times to affidavits submitted by the applicant. However, upon further review of the supporting evidence, none of the documentation was in the form of affidavits, as the statements discussed above were neither made under oath nor were they notarized. Regardless, there is no statutory or regulatory requirement that supporting evidence must be in the form of affidavits. While affidavits suit the purpose of establishing the identity of the individual

making assertions of fact, identity may be established with other documentation and may not even be required depending on the facts asserted. In the present matter, the applicant's initial documentation consisted of two employment letters and a letter from an organization. These letters are governed by guidelines that are specified in 8 C.F.R. § 245a.2(d)(3). Accordingly, the director's erroneous comments are hereby withdrawn.

Notwithstanding the flawed analysis, the director properly issued the NOID. Among her other findings, she noted that the the letterhead of Bangladesh Society, Inc. did not include a working phone number. The director notified the applicant that upon calling the number provided in the letterhead, she found that the number was no longer in service, therefore precluding CIS from being able to verify information provided by the president of the organization.

In response, the applicant provided his own affidavit dated September 27, 2005 in which he explained that Bangladesh Society, Inc. changed its phone number and further claimed that the organization's new phone number is under the name of [REDACTED] who the applicant claimed is the organization's former general secretary. In support of this claim, the applicant provided [REDACTED]'s phone contact information as well as that of [REDACTED], who the applicant claimed is the organization's treasurer. It is noted that the applicant provided no documentation to support that either of the individuals whose contact information was provided assumed the positions as claimed by the applicant. The AAO notes that the applicant's statements without supporting documentary evidence are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although the applicant provided a notarized copy of the first page of a telephone bill addressed to Fakhru Alam at the address belonging to Bangladesh Society, Inc., this document is insufficient to establish that the phone number in the bill belongs to the organization or that [REDACTED] assumes a post within the organization such that he can address the issue of the applicant's membership therein during the relevant statutory period. While the applicant points out that the phone bill contains a notary seal, the fact that the document has been notarized has no effect on the deficiencies noted by the AAO.

In a decision dated August 4, 2006, the director denied the application concluding that the applicant failed to provide sufficient documentation to support his claim. The director issued a finding similar to that of the AAO's observation above, noting that the applicant failed to submit evidence establishing that [REDACTED] is a former general secretary of Bangladesh Society, Inc.

On appeal, the applicant challenges the director's conclusion and provides documents that confirm the respective identities of [REDACTED] and [REDACTED]. However, as discussed above, [REDACTED] employment letters and the claims asserted by [REDACTED] in the context of his position within Bangladesh Society, Inc. are lacking in content. Merely establishing these individuals' identities will not add to the minimal probative value afforded to either document.

Lastly, the applicant provides a new affidavit dated August 15, 2006 from [REDACTED] who provided the applicant's current address and claimed that he had known the applicant since March 1982. However, this document is also deficient. First, even if the affiant's statements were afforded maximum

probative value, he did not claim to have known the applicant at the commencement of the statutory time period. Second, this affiant provided no information as to how he first met the applicant nor any details regarding the events and circumstances of the applicant's life in the United States. Third, despite the applicant's prior assertion that this individual held the position of treasurer with Bangladesh Society, Inc., no mention is made of this by the affiant. As such, his statement can only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory time period

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted other documentation that falls short of the regulatory and case law requirements.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 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-*, 20 I&N Dec. 77. 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.