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U.S. Citizenship  
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FILE:

MSC 04 324 10097

Office: NEW YORK

Date: **MAY 19 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. 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.

Robert F. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the director should have accepted his explanation regarding the inconsistencies in his evidence on humanitarian grounds, and that he has submitted sufficient documentation to establish “prima-facie eligibility” for adjustment of status.

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).

An applicant applying for adjustment to temporary resident status must 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).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. *See* 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 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 “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 (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 from prior to January 1, 1982, through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987, to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 August 17, 2004. In block 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 the following: [REDACTED], Brooklyn, New York, from December 1981 to March 1984; [REDACTED], Brooklyn from April 1984 to March 1989; and [REDACTED] Corona, New York from April 1989 to the date of the Form I-687 application. In block 33, where applicants are asked to list employment dating back to January 1, 1982, the applicant stated that he had worked as a construction helper for [REDACTED] in Brooklyn from January 1982 to July 1987, and as a “service man” for [REDACTED] at [REDACTED] in New York from August 1987 to August 1991. In block 31, where applicants are asked to identify any affiliations or associations, the applicant showed that he had been associated with the Bangladesh Society Inc. of New York from February 1984 to the date of the Form I-687 application, and with Baitul Mukarram Masjid & Islamic Center, Inc. from June 1987 to the date of the application.

In an August 8, 2004, affidavit, and on a form to determine class membership, which he signed under penalty of perjury on December 15, 1992, the applicant stated that he entered the United States in December 1981 when he crossed the border without inspection. On a Form I-687 application that he signed on December 15, 1992, the applicant claimed he was self-employed from January 1982 to July 1987, doing odd jobs. The applicant did not identify [REDACTED] as one of his employers nor did he identify his affiliation with the Bangladesh Society Inc. of New York.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. A copy of an October 10, 1992, affidavit from [REDACTED], in which he stated that the applicant lived with him at [REDACTED], Brooklyn, New York, when he first arrived in the United States in December 1981. In a July 31, 2004, notarized statement from [REDACTED] identified himself as the president of the company, and stated that the applicant worked with him as a part-time construction helper from January 1982 to July 1987. [REDACTED] also attested in a June 24, 1992, affidavit that the applicant left the United States for a visit to Mexico from July 18 to July 25, 1987.
2. A copy of a June 16, 1991, notarized statement from [REDACTED] in which he certified that he had known the applicant since he came to the United States in 1981. Mr. [REDACTED] did not indicate the circumstances surrounding his initial acquaintance with the applicant or the basis of his knowledge regarding the applicant's arrival and continued residence in the United States.
3. A May 25, 2005, sworn statement from [REDACTED], the applicant's sister, in which she stated that the applicant had resided in the United States for the past 24 years.
4. A May 2, 2005, notarized statement from [REDACTED] in which he certified that the applicant had been living in the United States for the past 24 years, and that he had seen him here. [REDACTED] did not state the circumstances of his initial acquaintance with the applicant. The applicant also submitted a copy of an August 11, 2004, affidavit from [REDACTED] in which he stated that he first met the applicant in the United States in 1982.
5. A copy of an August 11, 2004, affidavit from [REDACTED], in which he stated that he met the applicant in the United States in 1982. The affiant did not state his relationship with the applicant or the circumstances surrounding his initial acquaintance with the applicant.
6. A copy of an August 11, 2004, affidavit from [REDACTED], in which he stated that he met the applicant in the United States in 1982. [REDACTED] did not state his relationship with the applicant or the circumstances surrounding his initial acquaintance with the applicant.
7. A July 31, 2004, letter from the Bangladesh Society Inc., New York, signed by [REDACTED] general secretary. [REDACTED] certified that the applicant was an active member in good standing and had volunteered at many cultural and ceremonial events since 1984. While the letter identifies the applicant's current address, it does not identify the applicant's address during the entire period of his association with the organization, as required by 8 C.F.R. § 245a.2(d)(3)(v).
8. A copy of a June 24, 1992, affidavit from [REDACTED], in which he stated that the applicant resided with him at [REDACTED] in Brooklyn from April 1984 to March 1989. The applicant submitted a partial copy of an apartment lease for the stated premises, purportedly entered into by [REDACTED] and [REDACTED] on April 1, 1984. However, the version of the lease shows that it was copyrighted in 1987. Accordingly, it could not have been used to memorialize the terms of a lease in 1984.
9. A copy of an August 11, 2004, affidavit from [REDACTED], in which he stated that he met the applicant in the United States in 1985. The affiant did not state his relationship with the applicant or the circumstances surrounding his initial acquaintance with the applicant.

10. A copy of an August 11, 2004, affidavit from [REDACTED], in which he stated that he met the applicant in the United States in 1986. The affiant did not state his relationship with the applicant or the circumstances surrounding his initial acquaintance with the applicant.
11. A copy of a June 24, 1992, affidavit from [REDACTED], in which he stated that the applicant left the United States for a visit to Mexico from July 18 to July 25, 1987. Mr. [REDACTED] did not indicate the basis of his knowledge regarding the applicant's presence or absence from the United States.
12. A copy of a March 8, 1992, notarized statement from [REDACTED], who identified himself as the president of Dorlen Ice Cream Company. [REDACTED] certified that his company employed the applicant from August 1987 to August 1991. The letter from [REDACTED] does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i), in that it does not provide the applicant's address at the time of his employment, indicate the applicant's duties, or state whether the information was taken from company records. Accordingly, it has little probative value in this proceeding.

The applicant also submitted undated declarations from several individuals in which they stated that they knew that the applicant arrived in the United States prior to January 1, 1982, because the applicant's family told them. As they have no independent or objective knowledge of the applicant's arrival and residence in the United States, their statements are of no probative value in this proceeding. The record also contains unsigned declarations from the applicant's family stating that he wrote them of his arrival in the United States. However, the applicant submitted no document to corroborate this correspondence with his family.

In a Notice of Intent to Deny (NOID) dated December 5, 2005, the director notified the applicant that CIS was unable to verify the information provided in his supporting statements and affidavits because there was either no contact information or the individuals could not be contacted. Additionally, the applicant's sister informed CIS that the applicant had resided in the United States since 1988. The applicant was advised that he had 30 days in which to submit documentation to rebut the grounds on which the director intended to deny the application.

In response, the applicant apologized for any errors in his application, and attributed his sister's statement to her lack of English skills. The applicant also submitted a December 24, 2005, affidavit from [REDACTED] in which he stated that he had known the applicant since 1981 and knew of his attempts to submit his legalization paperwork in 1987 and 1988.

The director determined that the applicant had failed to demonstrate by a preponderance of the evidence that he is eligible for status as a temporary resident and denied the application on February 8, 2006.

On appeal, the applicant states that he didn't think about keeping records or receipts about where he lived because he was scared due to his illegal status. The applicant states that he explained his sister's statement in his response to the NOID. The applicant submits no additional documentation on appeal.

The affidavits and statements submitted by the applicant in support of his application lack sufficient detail to establish that the individuals providing the statements have knowledge of the applicant and his presence in the United States. Employment letters submitted in support of the applicant do not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that they did not provide the applicant's address at the time of his employment or that the information was taken from company records. Additionally, the district office was unable to verify their statements because contact information was either missing or currently

wrong. Although the applicant was notified of this in the NOID, he did not provide updated contact information for the affiants. Furthermore, the applicant's sister stated that he first arrived in the United States in 1988. Of significance also is the applicant's failure to state on his Form I-687 application that he signed on December 15, 1992, that he worked for [REDACTED], even though he submitted an affidavit from [REDACTED] stating that the applicant lived with him during the same time frame.

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 submitted no competent objective documentation to explain his sister's statement, merely alleging that she had a problem with her English speaking skills.

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-*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The record reflects that on June 5, 2003, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied by the Director, National Benefits Center, on June 29, 2004, under CIS receipt number MSC 03 248 63175. The applicant's appeal of that decision is not at issue in this decision.

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