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U.S. Citizenship
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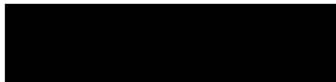


Office: NEW YORK

Date: **MAY 21 2008**

MSC 06 060 10498

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 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 she entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.¹

On appeal, counsel asserted that the director failed to adequately consider all of the evidence, which she asserted is sufficient to demonstrate the applicant's eligibility.

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 (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

The director alluded to the possibility that the applicant may not have attempted to file a previous Form I-687 and, thus, may not be eligible for CSS/Newman class membership. The director also issued a decision on the merits of the case, thereby treating the applicant as a class member.

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.

On the Form I-687 application the applicant stated that she was born on January 1, 1972 and entered the United States during August of 1981. At item 33 she stated that she was unemployed from August 1981 to some unstated date during 1983, attended school from 1984 to 1986, and helped her mother, who sold books on [REDACTED] in New York, from 1986 to 1992. The applicant provided no evidence, however, in support of her claim of school attendance or her employment claim.

The record contains:

- interviewer's notes from the applicant's March 27, 2006 interview;
- evidence to support the proposition that the applicant's father was in the United States during the requisite period;
- a letter dated May 10, 2005 from [REDACTED] General Secretary, Bangladesh Society, Incorporated, New York;
- an affidavit from the applicant dated May 17, 2005;

- a March 28, 2005 affidavit from [REDACTED]
- a December 6, 2005 affidavit from [REDACTED]
- an unsigned, undated form declaration from [REDACTED]
- an affidavit dated May 12, 2005 from [REDACTED]
- an unsigned, undated form declaration from [REDACTED]
- an affidavit dated May 10, 2005 from [REDACTED]
- an unsigned, undated form declaration from [REDACTED]
- a February 16, 2005 affidavit from [REDACTED]
- an unsigned, undated form declaration from [REDACTED]; and
- a March 21, 2006 affidavit from [REDACTED]

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

At her March 27, 2006 interview the applicant reiterated that she was born on January 1, 1972, and stated that she was ten years old when she entered the United States during August 1981. This office notes that if the applicant was born on January 1, 1972, then she was nine years old during August 1981.

In her May 17, 2005 affidavit the applicant reiterated that she entered the United States during August 1981.

In his March 28, 2005 affidavit [REDACTED] stated that he has known the applicant since she was eight or nine years old. This office notes that, given that the applicant was born on January 1, 1972, she could have been eight during 1980 and nine during 1981. [REDACTED] further stated, "I know the applicant . . . and her parents continuously in this country since 1981," but does not state the basis for that asserted knowledge. Finally, [REDACTED] stated, "we meet each other very occasionally [at] family parties and sometimes [call] each other for good wishes." A photocopy of a driver's license showing [REDACTED]'s birthday as January 1, 1943 accompanied that affidavit.

In his December 6, 2005 affidavit [REDACTED] stated that he was a friend of the applicant's father and that the applicant entered the United States during August 1981. [REDACTED] signature on the second affidavit is distinctly different from that on the first, and a photocopy of a driver's license shows his birthday as August 2, 1952. This office observes that the applicant, if the evidence

submitted is genuine, is apparently acquainted with two different men named Abdul Khaliq, each of whom submitted an affidavit.

The unsigned, undated form declaration of _____ states that he met the applicant in November 1981, when she visited his home with her father. The date of birth given for _____ on that declaration is August 2, 1952, which indicates that the declaration was submitted by the same _____ who submitted the December 6, 2005 affidavit.

The May 10, 2005 letter from the Bangladesh Society states that the applicant has volunteered with that society since 1987, without specifying when during that year she began. That letter, therefore, is of no evidentiary value pertinent to the applicant's residence in the United States during previous years.

Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) requires that attestations by churches to establish residence in the United States identify the applicant by name, be signed by a church official whose title is shown, show the dates of the applicant's membership, state the address at which the applicant resided during the membership period, establish how the author knew the applicant, and establish the origin of the information to which the affiant attests.

The letter from the Bangladesh Society does not state the address at which the applicant resided, how the affiant knew the applicant, or the origin of the affiant's knowledge. As such, it does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(v) pertinent to attestations by churches, unions, or other organizations of an applicant's residence. That letter will still be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(iv), but will be accorded less weight that it would have been if it complied with the regulatory requirements.

May 12, 2005 affidavit states, "I personally know . . . [that the applicant] . . . came to the USA . . . back in August 1981." The applicant further states that she entered the United States on November 15, 1985. The basis for his claimed personal knowledge of the date of the applicant's entrance into the United States was not revealed in that document. In his unsigned, undated form declaration _____ stated that he knows that the applicant was in the United States before 1982 because her father told him.

In his May 10, 2005 affidavit _____ also claimed personal knowledge that the applicant entered the United States during August 1981, but said he entered the United States during December 1997. In his unsigned, undated form declaration he admitted that he first met the applicant during 1988 and that the basis of his purported knowledge of her entry into the United States is that the applicant told him she did.

_____s February 16, 2005 affidavit states that he came to the United States during 1981 and that he first met the applicant during 1981.

In her unsigned, undated form declaration _____ stated that she came to the United States during 1985 and met the applicant in the United States during 1985, but knows the applicant

was here before 1982 because her husband told her. The basis of her husband's knowledge is not stated.²

s March 21, 2006 affidavit states that he is related to the applicant, that she came to the United States during August 1981, that he visited her and her parents during 1981 when they lived in Manhattan, and that he has continued to visit her on religious and family occasions.

In a Notice of Intent to Deny (NOID), dated July 17, 2006, the director stated that the applicant failed to submit evidence demonstrating her continuous residence during the requisite period. The director noted that the applicant had submitted no contemporaneous evidence in support of her claim of having entered the United States during August 1981 and that, in support of her claim of residence in the United States since then she had produced only affidavits. The director granted the applicant thirty days to submit additional evidence.

In response counsel submitted the March 21, 2006 affidavit of described above, and a brief asserting that the evidence demonstrates the applicant's eligibility. In the Notice of Decision, dated August 22, 2006, the director denied the application based on the reason stated in the NOID. On appeal, counsel asserted that the evidence submitted demonstrates that the applicant is eligible.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence in support of the residence in the United States of the applicant's father, includes affidavits, a memorandum from the Bangladesh consulate in New York, letters from a travel agency, the YMCA Elesair Project in New York, the Bangladesh Society in New York, a doctor in Brooklyn, and a receipt for the purchase of a barstool. This office will not consider the sufficiency of that evidence to demonstrate whether was in the United States during the requisite period. Whether or not it adequately supports the proposition that the applicant's father was present in the United States during the requisite period, it does not demonstrate to this office that the applicant was here during that time.

Although the applicant claimed to have worked from 1986 to 1992 that claimed employment was for her mother. She said she was not paid regular wages and has provided no documentation of that employment.

The applicant claims to have been a student at Seward Park on Grand Street in New York, from 1984 to 1986. The applicant provided no evidence of that claim either. A google search elicits

² With her declaration provided a photocopy of her driver's license, which states that she lives at in Brooklyn, New York. The address shown on the driver's license of born August 2, 1952 gives that same address. Those two declarants may be related by blood or marriage.

numerous websites that refer to a Seward Park High School at 350 Grand Street in New York, but no reference to a middle school or a junior high, or any other school the applicant could likely have attended from age ten to age 14.

The record contains insufficient evidence to demonstrate that the applicant was in the United States at any time during the requisite period, from let alone that she resided in the United States continuously during that period.

Other than the applicant's own statements, the affidavits are the only relevant evidence submitted in this matter, and they are insufficiently probative.

The May 12, 2005 affidavit of [REDACTED] states that he personally knows that the applicant entered the United States during August of 1981, but also states that he entered the United States on November 15, 1985 and that he first met her in 1986. It does not detail the nature and frequency of his contacts with her since they first met. It does not state the basis of his asserted personal knowledge that she entered the United States during August of 1981 and continuously resided during the salient period.

The unsigned undated declaration of [REDACTED] clarifies the basis for his asserted knowledge by asserting that the applicant's father told [REDACTED] about the applicant's entry into the United States. This office notes that this third party information does not constitute personal knowledge.

The May 10, 2005 declaration of [REDACTED] states that he personally knows that the applicant entered the United States during August of 1981, but also states that he entered the United States during December 1997. It does not state when or whether he met the applicant in the United States. It does not detail the nature and frequency of his contacts with the applicant. It does not state the basis of his asserted personal knowledge that she entered the United States during August of 1981 and continuously resided during the salient period.

The unsigned undated declaration of [REDACTED] clarifies the basis for his asserted knowledge by stating that the applicant herself told [REDACTED] about the applicant's entry into the United States. This office notes that being told by the applicant when she entered the United States does not constitute personal knowledge.

The unsigned undated declaration of [REDACTED] states that she entered the United States during 1985 and that she first met the applicant during 1985, but that she knows that the applicant was in the United States prior to 1982 because her husband told her so. This office notes that such third party information does not constitute personal knowledge.

Because they attest to the applicant's residence in the United States during a time when they were not in the United States themselves and had not met her, the affidavits of [REDACTED] and [REDACTED] are entirely without evidentiary value.

The March 28, 2005 affidavit of the [REDACTED] born January 1, 1943 states that the applicant entered the United States during August 1981 and has remained here since, but does not state the basis of the affiant's asserted knowledge. As to the nature and frequency of his contacts with the applicant, he merely states that they meet "very occasionally" at family parties. That affidavit is of very little evidentiary value.

The December 6, 2005 affidavit of the [REDACTED] born August 2, 1952 states that the applicant entered the United States during August 1981. In his unsigned, undated form declaration, the same [REDACTED] stated that he met the applicant in November 1981, when she visited his home with her father. [REDACTED] did not describe, in either his affidavit or his unsigned declaration, the nature or frequency of his meetings with the applicant since her entry. That affidavit is therefore of slight evidentiary value.

The March 21, 2006 affidavit of [REDACTED] states that the applicant entered the United States during August of 1981, and that he used to play with her during 1981 when he visited her family. [REDACTED] stated that he and the applicant have continued to visit each other on religious or family occasions, but without describing the frequency of those visits. He also stated that he is related to the applicant. That affidavit is of scant evidentiary value.

Only the affidavit of [REDACTED] includes the affiant's telephone number. This renders the other affidavits less amenable to verification. Although not required, none of the affidavits is accompanied by evidence that the affiants themselves were in the United States during the requisite period.

All of the affidavits submitted lack credibility and detail sufficient to confirm that the applicant resided in the United States during the requisite period. Further, three of the affidavits that assert personal knowledge of the applicant's entry into the United States during August 1981 subsequently reveal that they are not, in fact, based on personal knowledge.

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 she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.