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U.S. Citizenship
and Immigration
Services

LI



FILE: [REDACTED]
MSC-05-218-10590

Office: NEW YORK

Date: **MAY 21 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: 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.

A handwritten signature in black ink, appearing to read "D. 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 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), 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. The director denied the application, finding 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 asserts his claim of eligibility for temporary resident status and submits affidavits as 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).

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) 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. *See* 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.* at 80. 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 6, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit dated January 16, 1991 from _____ of the Muslim Community Center of Brooklyn, Inc. in which he stated that he has known the applicant since 1981, that the applicant always offered his prayers to the Mosque, and that he has been participating in all Friday congregations. He further stated that the applicant is a great contribution towards the development of the Mosque. This attestation is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he indicated that he had no affiliations or associations with any churches, clubs, or organizations. This inconsistency calls into question the representatives ability to confirm that the applicant resided in the United States during the requisite period. Because this letter contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the statement conflicts with other evidence in the record it can be accorded only

minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated March 24, 1999 from [REDACTED] of the Bangladesh Society Inc., New York where he stated that the applicant was a long-standing member of the organization and that he regularly participates in various activities organized by the organization. He further stated that the applicant entered the United States prior to January 1, 1982 and has continuously resided in an unlawful manner, except for a brief absence, in this country. Here, the attestation is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he indicated that he had no affiliations or associations with any churches, clubs, or organizations. This inconsistency calls into question the representative's ability to confirm that the applicant resided in the United States during the requisite period. Because the statement conflicts with other evidence in the record it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that the applicant entered the United States before January 1, 1982, and has been residing in the country in an unlawful status since, excepting a brief absence. Here, the affiant fails to indicate when he first met the applicant and where. Although not required, he fails to indicate that he himself was present in the United States throughout the requisite period. He fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this attestation is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1980, that he entered the United States before January 1, 1982, and that he has continuously resided in the country in an unlawful status since then. Here, the affiant fails to indicate where she first met the applicant. Although not required, she fails to indicate that she herself was present in the United States throughout the requisite period. The affiant fails to indicate the frequency with which she saw and communicated with the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon her firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this attestation is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] of Jubilee Travel Limited in which she stated that the applicant entered the United States before January 1, 1982, and has been residing in the country in an unlawful status since, excepting a brief absence. Here, the affiant fails to indicate when she first met the applicant and where. Although not required, she fails to indicate that she herself was present in the United States throughout the requisite period. She fails to indicate the frequency with which she saw and communicated with the applicant during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon her firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this attestation is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director determined that the affidavits submitted were not credible and insufficient to support the applicant's claim of eligibility for temporary resident status, and thereafter issued a Notice of Intent to Deny (NOID) to the applicant on February 6, 2006.

The applicant responded to the NOID on March 3, 2006 by submitting copies of a letter from AT&T dated June 20, 1985, a receipt from [REDACTED]'s dated October 3, 1982, two postmarked envelopes addressed to the applicant, and a membership application dated February 11, 2003 from Bangladesh Society, Inc. Here, the evidence is dated subsequent to January 1, 1982, and therefore, is insufficient to demonstrate the applicant's presence in the United States throughout the requisite period. It is noted that the Bangladesh Society membership application is dated subsequent to the requisite period, and therefore, is irrelevant to the applicant's eligibility. It is also noted that the postmarks are illegible on the envelopes. It is further noted that the applicant's name appears to have been added to the receipt from Alexander's subsequent to its issuance date.

The applicant also submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that the applicant is a "friend of my friend." The affiant lists the applicant's addresses from October of 1980 to September of 1995. Here, the affiant does not indicate when and where he met the applicant. There is nothing in the affiant's statement to demonstrate the frequency with which he saw and communicated with the applicant and under what circumstances. The affiant lists two addresses where the applicant allegedly resided from 1980 to 1995. However, there is nothing in the record to demonstrate that this information is based upon his firsthand knowledge rather than knowledge that is based primarily on what the applicant told him about his addresses in the United States. Because this attestation is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] in which he stated that he has known the applicant since 1980 and that he became the declarant's patient on December 13, 1982. The declarant has failed to

submit supporting documentation such as medical records or office appointment books or patient receipts to substantiate his claims. There is not indication from the record how frequently Dr. [REDACTED] saw the applicant as a patient. There is no evidence to show that the declarant himself was present in the United States throughout the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981. Here, the affiant fails to indicate when in 1981 he met the applicant and where. Although the affiant attests to knowing the applicant since 1981, he has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated April 7, 1993 from [REDACTED] of [REDACTED] General Contracting Corp. in which he stated that the company employed the applicant as a construction handyman from May of 1983 to September of 1986. Here, the affidavit does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the affiant indicate whether the employment information was taken from company records. The availability of the company records for inspection has not been clarified. In addition, the record does not contain pay stubs, cancelled checks, payroll records, IRS W-2 Forms, certification of filing federal or state income tax returns, or other employment records that pertain to the requisite period, to corroborate the assertions made by the affiant. *See* 8 C.F.R. § 245a.2(d)(3)(i). Because this affidavit does not conform to regulatory standards it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he initially met the applicant at his place of residence at [REDACTED] in Brooklyn, New York. The affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he initially met the applicant in a Bengali grocery store at Fulton Street in Brooklyn, New York. The affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he initially met the applicant at a public community gathering in Jackson Heights. The affiant fails to specify the frequency with which he saw and communicated with the applicant

throughout the requisite period. Although not required, there is nothing in the record to demonstrate that the affiant himself was present in the United States throughout the requisite period. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the record did not contain evidence to show that the [REDACTED] General Contracting Corp. was doing business during the requisite period. He further noted that there was no supporting documentation submitted with [REDACTED]'s letter to demonstrate the doctor-patient relationship. He also noted that the affidavits submitted by the applicant were not accompanied by any identification documents or documents demonstrating the affiant's presence in the United States throughout the requisite period.

On appeal, the applicant asserts that he entered the United States in October of 1980. He further asserts that he has submitted all evidence available to him and that he has no documentation attesting to his association or affiliation with churches or organizations. The applicant states that the [REDACTED] General Constructing Corp. paid him in cash and that it was doing business since 1980, but did not register as a business until after that period. He reasserts his claim of eligibility for temporary resident status and submits additional evidence.

The applicant resubmits copies of affidavits from [REDACTED], and [REDACTED]. He also submits copies of the affiants' New York State Driver Licenses. Although the applicant submitted copies of the affiants' identity documents, they fail to demonstrate the affiants' presence in the United States throughout the requisite period.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has personal knowledge of the applicant entering the United States through Canada in October of 1980, and remaining in the country since that time, barring a brief absence from the country in 1987. Here, the affiant fails to demonstrate his personal knowledge of the applicant's entry into the United States or the circumstances and events surrounding the applicant's residence throughout the requisite period. The affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period.
- An affidavit from [REDACTED] in which he stated that he has personal knowledge of the applicant entering the United States through Canada in October of 1980, and remaining in the country since that time, barring a brief absence from the country in 1987. Here, the affiant fails to demonstrate his personal knowledge of the applicant's entry into the United States or the circumstances and events surrounding the applicant's residence throughout the requisite period. The affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period. Because this attestation is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's decision with respect to his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to submit any objective evidence to explain or justify the inconsistencies contained in the record. The affidavits submitted by the applicant are not credible, conflict with other evidence in the record, and are lacking in detail and have minimal probative value. The affidavits submitted by the applicant on appeal are not supported by corroborative evidence that demonstrate the affiant's firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period.

The absence of sufficiently detailed 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 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.