



U.S. Citizenship
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FILE: [REDACTED]
MSC 04 273 10957

Office: NEW YORK

Date: **MAY 27 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 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.

RPW 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, 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director specifically noted various information provided by the applicant on a previously submitted Form G-325 as well as information she provided at her interview that took place on March 20, 2006, noting that certain information provided contradicted the applicant's claim of residence in the United States during the requisite time period. Accordingly, the director denied the application, finding that the applicant had not met her 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, counsel for the applicant questions the validity of the director's decision, asserting that the director did not provide specific reasons why the additional documentation previously submitted in support of the notice of intent to deny (NOID) was not sufficient to overcome the adverse findings.

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 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 she resided in the United States during the requisite time period. Here, the director properly found that the applicant did not meet her burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687, purportedly in 1987, and subsequently filed a Form I-485 seeking permanent resident status under the Legalization Immigration Family Unity (LIFE) Act.¹ The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the relevant time period:

1. A letter dated November 8, 1988 signed by the secretary and president of the Baitul Mukarram Masjid & Islamic Center, Inc. indicating that the applicant's residence at the time was [REDACTED], Elmhurst, New York. The letter states that the applicant has **been known to the religious organization since 1985. The information regarding the applicant's residential address is inconsistent with the information provided by the applicant in the Form I-687 she filed on June 29, 2004, where she indicated at No. 30 that her**

¹ The record shows that the first of two Form I-687 applications was completed by the applicant and dated August 25, 1987. This date does not appear to reflect the true date of the form's completion in light of information found in No. 33 of the application in which the applicant provided a single U.S. residence where the applicant claimed to have resided since December 1995. The AAO notes that it is factually impossible for the applicant to discuss anything that took place in 1995 in an application that was completed in 1987. No explanation is apparent from the documentation submitted on record.

residence from January 1982 to December 1988 was at [REDACTED] Brooklyn, New York. In fact, the applicant indicated on her Form I-687 filed in 2004 that she began residing at [REDACTED] in June 1995. Additionally, the applicant did not indicate in either of her Form I-687 applications that she had any affiliations with the religious institution named herein.

2. An undated employment letter from a manager of the Royal Bengal Restaurant claiming that the applicant worked at this establishment from March 1982 to February 1987. It is noted that the name of the person who signed this document was not provided and the signature is entirely illegible. Further, while the document appears to have been dated by a notary a portion of the date was cut off from this copy. Lastly, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must include: (1) 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. This employment letter indicates the applicant's address at the time the letter was written, but does not indicate where the applicant resided at the time of the purported employment. Moreover, the letter was apparently notarized in 1991, but the address provided for the applicant was listed on her Form I-687 as her residence since June 1995. Additionally, the applicant's duties and the origin of the information in this letter were not provided.
3. An affidavit dated June 7, 2004 signed by [REDACTED] who stated that she has known the applicant since January 1982. The affiant provided the applicant's list of addresses during her purported unlawful residence in the United States. While not directly pertaining to the issue of the applicant's residence during the statutory period, this affiant's account of the applicant's current address is inconsistent with information provided by the applicant. Specifically, while the applicant claims that she has resided at [REDACTED] since June 1995, the affiant stated that the applicant has resided at [REDACTED] during that same time period. This inconsistency leads the AAO to question how well this affiant may have known the applicant and her residential address over twenty years ago if she does not know where the applicant currently resides. Further, and more importantly, the relevant statutory time period during which the applicant's residence must be established commenced on January 1, 1982. It is noted that this affiant did not specify that she knew of the applicant's residence in the United States as of January 1st. Lastly, this affiant provided no details about the events and circumstances of the applicant's purported residence during the statutory time period. As such, her statement does not lend credibility to an alleged 24-year relationship with the applicant.
4. Affidavits from [REDACTED], whose affidavit is dated June 17, 2004, [REDACTED] whose affidavit is dated June 25, 2004, [REDACTED] whose affidavit is dated June 24, 2004, and [REDACTED], whose affidavit is undated, all claiming that they each met the applicant in 1981. While all of the affiants claimed to have personal relationships with the applicant,

their respective statements lack any details that would lend credibility to their alleged 23-year relationships with the applicant.

5. An affidavit dated March 19, 2006 from [REDACTED] who claimed to have known the applicant since November 1981. Although the affiant claimed that the applicant has been a family friend, she provided no details that would lend credibility to their alleged 25-year relationships with the applicant.
6. An affidavit dated February 20, 2006 from the senior vice president of Bangladesh Society, Inc. who stated that the applicant is currently a member of the organization and was also a member of the organization from 1982 to 1984. However, the letter fails to provide the applicant's residential in the United States during her claimed association with the organization within the statutory period. Further, the applicant did not indicate in either of her Form I-687 applications that she had any affiliations with the institution named herein. This leads the AAO to question the validity of the statements claimed in this affidavit.
7. Two inconsistent statements from the president of Al-Hera Islamic Institute, Inc. The earlier of the two statements, dated February 22, 2006, is notarized and includes the applicant's current residential address and the claim that [REDACTED] has known the applicant since 1982. The later statement, dated March 13, 2006, is nearly identical but for the fact that it is not notarized and instead of claiming to know the applicant since 1982, [REDACTED] claimed that he has known the applicant since November 1981. Neither letter includes the applicant's residential in the United States during the statutory period. Further, the applicant did not indicate in either of her Form I-687 applications that she had or currently has any affiliations with the religious institution named herein. This anomaly, as well as the inconsistent claim made by the same individual, leads the AAO to question the validity of [REDACTED] claims.²
8. Affidavits dated February 18 and February 20, 2006 from [REDACTED] and [REDACTED], respectively, both of whom claimed to have known the applicant since January 1982. Although the affiants claimed that the applicant is a close friend, neither provided details that would lend credibility to their alleged 24-year relationships with the applicant. Furthermore, neither affiant specified the exact dates or circumstances of their respective first encounters with the applicant. As such, it is not clear whether either affiant knew the applicant as of January 1, 1982 when the statutory period commenced.
9. An affidavit dated April 7, 2006 from [REDACTED] claiming to have known the applicant since November 7, 1981. Although this affiant provided the applicant's claimed residential address as of the date he first encountered the applicant, the applicant's current

² Incorporation records obtained from the New York Department of State, Division of Corporations indicate that Alhera Islamic Institute, Inc. was incorporated on March 28, 1995. This brings into question its existence during the statutory period during which the applicant is claimed to have been a member of this organization.

residential address is entirely incorrect. Namely, the affiant claimed that the applicant currently resides at [REDACTED] Woodside, New York, an address that the applicant did not include in the list provided in No. 30 of her most recent Form I-687. Furthermore, this statement lacks any details that would lend credibility to an alleged 25-year relationship with the applicant.

10. An affidavit dated April 6, 2006 from [REDACTED] who claimed that he has known the applicant since October 1981 and provided the applicant's residential address as of that date. Although the affiant claimed that the applicant visited him and attended some of his social gatherings, this statement lacks any details that would lend credibility to an alleged 25-year relationship with the applicant.
11. An affidavit dated January 17, 2000 from [REDACTED] who claimed to have known the applicant since December 1981. The affiant claimed to have met the applicant during the applicant's purported residence at [REDACTED] Brooklyn, New York. The affiant also claimed to have "met with her several times during the period from 1981." The affiant did not, however, specify the frequency of his/her encounters with the applicant during the relevant time period, nor does the affidavit include any details that would lend credibility to an alleged 25-year relationship with the applicant.
12. An affidavit dated January 17, 2000 from [REDACTED] claiming that applicant was residing with him/her at [REDACTED] Brooklyn, New York from October 1981 to December 1988. The affiant provided no evidence to establish that he/she resided at the claimed address during the relevant time period, nor did he/she provide any details about the events and circumstances of the applicant's residence in the United States that would lend credibility to an alleged 19-year relationship with the applicant.

Given the inconsistencies and deficiencies in each of the affidavits and written statements from third parties as discussed above, each of them can be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period. The applicant also submitted a photocopied, handwritten pharmacy receipt dated December 24, 1981. **The receipt contains the applicant's name and the address where she claims to have resided as of January 1982.**

On March 25, 2006, the director issued a notice of intent to deny the applicant's Form I-687. The director specifically addressed the discrepancy between information provided by the applicant in support of the current Form I-687 application and information she provided in the Form G-325A, which she filed simultaneously with her application for permanent resident status under the LIFE Act. Specifically, in the latter form, the applicant provided her address in Bangladesh and indicated that she resided at that address from the date of her birth through April 1987. The director properly determined that this information undermines the applicant's claimed eligibility for temporary resident status, which requires that the applicant establish residence in the United States during a time when she was apparently still residing in her home country of Bangladesh.

In response, counsel submitted a letter dated April 12, 2006 in which he asserted that the applicant's poor command of the English language caused her to erroneously convey the date and months of her residence in the United States and her travel abroad. Counsel further made the general claim that due to the applicant's limited abilities to speak and write in English, inconsistencies in the record are unintentional, and that the affidavits submitted should establish that the applicant meets the requirements of continuous residence.

In the director's denial, dated September 6, 2006, the director responded to counsel's assertion, pointing out that the applicant's March 20, 2006 interview was conducted in the presence and with the assistance of a Bengali interpreter. As such, counsel's claim that the inconsistencies in the record are generally unintentional mistakes due to poor English is not supported by the evidence of record. Moreover, the affidavits upon which counsel relies are significantly deficient, as discussed above. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Even if the AAO were to give any weight to counsel's explanation and disregard the applicant's inconsistent statement made during her interview, there is no evidence to indicate that the facts set forth in the applicant's Form G-325 were erroneous. Thus, based on the information in the Form G-325, the applicant, by her own admission, resided in Bangladesh from 1965 through April 1987. This admission discredits the applicant's current claim and renders her statutorily ineligible for temporary resident status.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. While this would not adversely affect the applicant's claim, the record also shows that the applicant's claim is primarily supported by deficient attestations from individuals who failed to provide sufficient information regarding the applicant's alleged residence in the United States during the relevant time period. The absence of credible, probative, and 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. In the present matter, several of the affiants provided information that was inconsistent with the applicant's claim. Even among those affidavits that were not inconsistent with the applicant's claim, none contained information other than the month and year of each affiant's claimed first encounter with the applicant and the applicant's address, either current or during the relevant time period, thus having little probative value. Accordingly, given the applicant's contradictory statements on her applications and her 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 from prior to January 1, 1982 through the date she 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.