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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: NOV 13 2008

MSC 05 159 13562

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.

John F. Grissom, Acting 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 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 on March 8, 2005. In her decision dated March 6, 2006, the director stated that the applicant's interview was postponed on December 12, 2005 since an interpreter was requested by the applicant and rescheduled for March 6, 2006. On March 6, 2006, the applicant failed to appear for his rescheduled interview and the Form I-687 application was denied due to abandonment.

On March 20, 2006, counsel on behalf of the applicant filed a motion to reopen the case. The motion was granted on March 21, 2006, and the director withdrew her decision to continue the processing of the applicant's Form I-687 application. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On November 14, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant failed to submit sufficient credible documents that could verify the applicant's continuous residence in the United States for the duration of the requisite period. In response to the NOID, the applicant failed to submit additional evidence for consideration. The director denied the application, finding 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.

On appeal, the applicant asserts that he has established eligibility for the benefit sought.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in New York from June 1981 to December 1990. He indicated at part 33 of his Form I-687 application that he worked for ██████████ General Contractor in New York as a laborer from June 1981 to December 1990. The Form I-687 application at part 32 lists one absence from the United States for the applicant since his initial entry. The applicant states that he traveled to Bangladesh to meet his family from March 1987 to April 1987.

On October 13, 2006, the applicant was interviewed in connection with his Form I-687 application. The director determined that upon review of the applicant’s testimony and evidence presented, the applicant did not demonstrate eligibility for the benefit sought under section 245A of the Act.

The applicant indicates on his class membership (CSS v. Thornburgh (Meese)) determination form dated February 14, 2005 that he initially entered the United States on June 1, 1981, without inspection, at Miami, Florida. The applicant states that he entered the United States by boat and remained until March 7, 1987, when he left to visit his family in Bangladesh. The applicant claims to have reentered the United States on April 3, 1987 without inspection at Miami, Florida by boat. This same information regarding his initial entry was reiterated by the applicant during a sworn statement taken at the JFK airport, New York, NY in 2006. The applicant was attempting to reenter the United States from Bangladesh on March 12, 2006. The applicant was paroled into the United States based on his advance parole document (Form I-512) on March 22, 2006.

In an attempt to establish entry into the United States and continuous unlawful residence in the United States before January 1, 1982, the applicant submitted affidavits relevant to the requisite period from [REDACTED], [REDACTED], and [REDACTED]. The affidavits fail to explain how the affiants and the applicant developed and maintained a friendship. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from the claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits do not contain sufficient detail to establish their credibility. Therefore, they have little probative value.

The AAO also notes inconsistencies in the affidavits. The affidavits that were sworn to and signed by [REDACTED] on February 2nd and 5th of 2005 and December 22, 2006 contain conflicting information. In his affidavit dated February 2, 2005, the affiant states that the applicant lived with him from June 1981 to December 1990; in another affidavit dated February 5, 2005, the affiant states that the applicant resided in Brooklyn, New York from July 1981 to present, that he met the applicant right before December 1981 and that the applicant is his best friend; and in his recent affidavit dated December 22, 2006, he states that the first time he met the applicant he saw him working with [REDACTED] General Contractor in August 1981. Mr. [REDACTED]'s affidavits are inconsistent and will be given no weight.

[REDACTED]'s affidavits are also inconsistent and will be given no weight. The affidavit dated February 8, 2005 and signed by [REDACTED] states that the applicant resided in Brooklyn, New York from June 1981 to present, that the affiant met the applicant right before December 1981 and that the applicant is his best friend. In an affidavit dated December 20, 2006, he states that he has known the applicant since June, 1981.

Upon review, the affiants have attested to the applicant residing in the United States from July, August or sometime before December of 1981. The applicant states that he entered the United States without inspection on June 1, 1981, and except for the departure in 1987, he continued his unlawful residence in the United

States since such date and throughout the requisite period. None of the affidavits corroborate the applicant's sworn testimony that he entered the United States through Miami via the Bahamas by boat on June 1, 1981. The affidavits contain information contradicting the applicant's testimony as well as contradicting their own testimony. No explanation is provided for these contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's entry into and residence in the United States during the requisite period. Therefore, the affidavits provided by the applicant are not deemed credible and shall be afforded no weight. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submitted a statement from his employer, _____ General Contractor. The statement indicates that the applicant worked for the firm from June 20, 1981 to December 10, 1990 as a construction worker. The letter does not contain any other information. 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. As the statement does not meet the requirements stipulated in the aforementioned regulation, it will not be considered.

The applicant also submitted a statement signed by the general secretary of the Bangladesh Society Inc. New York dated December 21, 2006. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The statement does not comply with this regulation in that it does not show the inclusive dates of membership, the applicant's address during the membership period and the origin of the information. Thus, the statement will be given little weight.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The inconsistencies that exist in the above noted evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affidavits and statements, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the

United States for the requisite period as required 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