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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

NOV 14 2008

MSC 05-180-11476

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 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 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 his unlawful residence for the requisite time period and he submits additional evidence for consideration in support of his appeal.

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.

The issue in this proceeding is whether the applicant has established 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. Apart from his own testimony, documentation that the applicant submitted prior to his appeal in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and family, and an affidavit of employment. Though there is other evidence in the record that either indicates that the applicant resided in the United States after May 4, 1988 or does not attest to his residence in the United States during the requisite period; however, because evidence that does not discuss the applicant’s residence prior to May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. With his appeal, the applicant has also submitted a brief from counsel, a second affidavit from [REDACTED] a declaration from [REDACTED], and a death certificate. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits submitted prior to the applicant’s appeal of the director’s decision from [REDACTED] and [REDACTED] and [REDACTED] indicate that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during part of all the required period. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. In many cases, the affiants’ testimony is not consistent with other evidence in the record as discussed below. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

Affiants [REDACTED], and [REDACTED] state that they saw the applicant at Friday prayers at a mosque in the United States. However, these affiants do not indicate when they attended this

mosque with the applicant or whether they attended the mosque during the requisite period. Further, the applicant did not indicate that he attended any mosques on his Form I-687. This casts doubt on the affiant's claims that they saw a mosque in general.

Though affiant [REDACTED] provides details regarding when and where he first met the applicant, he states that he did not meet the applicant until 1987. Therefore, his affidavit carries no weight as evidence of the applicant's residence in the United States before that time. Further, the affiant states that he knows that the applicant could not attend his father's funeral because of his immigration status. However, the affiant signed his affidavit in March of 2004, but in March of 2005, one year after the date of this affidavit, the applicant indicated that his father was still alive. Though this inconsistency is not relevant to the applicant's residence in the United States during the requisite period, it does cast doubt on statements made by this affiant in general. 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).

Affiant [REDACTED] states that he has personally known the applicant since November 1981, when he met him in New York. He further provides addresses for the applicant from May 1981 through the end of the requisite period that are in Jackson Heights and Jamaica, New York. However, the applicant stated on his current Form I-687 that he did not enter the United States until December 1981 and that he resided in Richmond Hill, New York from January 1982 to September 1985 and then in Florida from October 1985 until July 1986. This casts grave doubt on the affiant's assertion that he has personal knowledge of the applicant's continuous residence in the state of New York from May 1981 until the end of the requisite period.

The record also contains an affidavit that is signed by [REDACTED] but contains contact information for [REDACTED]. Though this affidavit contains testimony pertaining to the applicant's residence in the United States during the requisite period, it is generally lacking in detail. The affiant does not state when or where he first met the applicant, where the applicant resided during the requisite period or what the nature of their relationship was. Further, it is not clear why the affidavit is signed by one affiant but contains contact information for another individual.

The affidavit from [REDACTED], who states that she co-habitated with the applicant from October 1986 until she submitted her affidavit in March 1990. However, the affiant does not provide any information as to how she is able to determine the date she and the applicant began to reside together or state whether there were periods of time when she did not see the applicant.

On appeal, the applicant has submitted an additional affidavit from [REDACTED] a declaration from [REDACTED] and the death certificate of [REDACTED] late husband, [REDACTED]

The second affidavit from [REDACTED] is dated March 2, 2007 in it, [REDACTED] states that he has personally known the applicant since 1981. He states that helped take care of the applicant financially, through paying rent, and providing him with food. He states that the applicant came to the United States when he was very

young and that he helped the applicant through his uncle, [REDACTED]. However, the affiant does not state where he first met the applicant or whether he first met him in the United States. Further, in this affiant's February 9, 2007 affidavit, which was signed less than one month prior to this affidavit, the affiant stated that he met the applicant in the "mid-1980's" and also states that he does "not recall exactly the first year I first met [REDACTED]" It is noted that the affiant clearly refers to the applicant when he refers to [REDACTED] in this case. This casts doubt on his current claim that he first met the applicant in 1981.

The declaration from [REDACTED] submitted on appeal states that the declarant is the applicant's aunt and that he went to the United States with her late husband, [REDACTED] in 1981. She states that her husband returned to Bangladesh in 1986 and has since passed away. The death certificate submitted with this declaration confirms that a [REDACTED] died in Bangladesh in August of 1988. However, this declarant does not state whether she knows if the applicant resided in the United States for part of all of the requisite period after he left for the United States in 1981.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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 a 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 witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The employment affidavit that was submitted by the applicant's alleged former employer, [REDACTED] of [REDACTED] is also of little value because it is not consistent with the applicant's statement in his Forms I-687, noted later in this decision. Affiant [REDACTED] states that the applicant worked for him as a construction helper from December 1985 to August 1989. However, on his current Form I-687, the applicant indicated that he was self-employed as a day laborer from 1982 to the present. He stated that he was employed by [REDACTED] from October 1985 until 1991 on his 1991 Form I-687. The applicant did not indicate that he ever worked for [REDACTED] on either Form I-687.

The employment affidavit provides testimony that is not consistent with other evidence in the record, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence provided by the applicant is also not deemed credible and shall be afforded little 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 record contains two Forms I-687, one of which was submitted on March 29, 2005 pursuant to the CSS/Newman Settlement Agreements, which is referred to as the, "current Form I-687." The second of which was signed and submitted by the applicant in 1991 to establish class membership. On the applicant's current Form I-687, he indicated that he resided in Richmond Hill, New York from January 1982 to September 1985; in Pompano Beach, Florida from October 1985 until July 1986; and then in Astoria New York from October 1986 until July 1995. However, on the applicant's 1991 Form I-687 he did not indicate any addresses of residence until October 1985, when he stated he resided in Pompano Beach, Florida. Also of note, the applicant indicated that he was self-employed as a day laborer from 1982 to the present on his current Form I-687, but stated that he was employed by specific employers including Hendrix Farms, a Grocery and Deli and then for [REDACTED] from October 1985 until 1991 on his 1991 Form I-687. As was previously noted, neither Form I-687 is consistent with the employment indicated in the employment letter from [REDACTED] of [REDACTED].

The applicant stated that he was absent from June 1986 until September of that year on both of his Form I-687 applications. This indicates that the applicant had a single absence of more than 45 days during the requisite period. Though the applicant's attorney asserted in a letter submitted in February 2007 that these dates appear on the applicant's current Form I-687 due to a clerical error, this does not explain why the applicant would have previously stated these same dates of absence on his 1991 Form I-687. Further, in this same letter, the applicant's attorney stated that this absence was actually from August 20, 1986 until October 29, 1986, which also constitutes an absence of more than 45 days.

The record also contains a Form G-325, which was submitted with a previous application and was executed under penalty of perjury. This form indicates that the applicant resided in Moulvibazar, Bangladesh from 1970 until October 1986. This information is contradictory to the statements made by the applicant at his legalization interview, on his Forms I-687, and to statements made by the applicant's witnesses in sworn affidavits. This information also indicates that the applicant did not enter the United States prior to January 1, 1982 and did not reside continuously in the United States for the duration of the requisite period.

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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, supra.*

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.