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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-188-12009

Office: NEW YORK Date:

OCT 03 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 "R. 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. Specifically, in the Notice of Intent to Deny (NOID), the director stated that the affidavits the applicant submitted were not credible, as they were not submitted with proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residence. Therefore, the applicant failed to satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In denying the application, the director stated that though the applicant submitted evidence in response to the NOID, it did not overcome her reasons for the denial of the application.

On appeal, the applicant submits a brief and additional evidence in support of his application.

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)(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) 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).

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 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 6, 2005. At part #31 of the Form I-687 application where applicants were asked to list all churches and organizations of which they were affiliated, the applicant indicated that during the requisite period he was a member of the Madina Masjid in New York beginning in 1983 and of the Bangladesh Society in New York beginning in 1985. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that during the requisite period he was employed by the Kismot Indian Restaurant from July 1981 until February 1987 and then by Mitali Indian Restaurant from February 1987 until May 1995.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant’s address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records

are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, unions or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to.

Prior to the date the director issued the NOID, the applicant submitted the following evidence that is relevant to his residence in the United States during the requisite period:

- An affidavit from the applicant that was notarized March 21, 2005. The applicant states that he first entered the United States in June 1981 and has resided continuously in the United States since that time.
- An affidavit from [REDACTED] that was submitted with a photocopy of Mr. [REDACTED] New York Driver's License. The affiant states that he first met the applicant in the United States in 1985 and that he knows that the applicant traveled outside of the United States in 1985. However, the affiant does not state the frequency with which he saw the applicant during the requisite period. He fails to state whether there were periods of time during the requisite period when he did not see the applicant.
- Two affidavits signed by the applicant that indicate that the applicant was employed by both Kismat Indian Restaurant and Mitali Indian Restaurant during the requisite period. These affidavits were not submitted with other evidence verifying the applicant's dates of employment. As such, they are significantly lacking with regards to the criteria to which the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment affidavits must adhere.
- A photocopy of a declaration from the Islamic Council of America, Madina Masjid that is signed by [REDACTED], who does not state his affiliation with the Masjid. The declaration is dated November 10, 2004 and states that the applicant has regularly participated in weekly prayer for the past 20 years. However, the declarant does not state how he is affiliated with the Masjid. He fails to indicate how he knows the applicant's start date as a member and further fails to state the frequency with which the applicant attended Friday prayers during the requisite period. Because this declaration is lacking with regards to the requirements found in the regulation at 8 C.F.R. § 245a.2(d)(3)(v), it can be accorded only minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.

- An application for new membership in the Bangladesh Society that the applicant signed on February 10, 2003. It is noted that the applicant indicated on his Form I-687 that he began to be a member of this society in 1985. Therefore, it is not clear why he would submit a new membership application in 2003. That he did so casts doubt on his claim of the start date of his membership with this society.
- A photocopy of an envelope addressed to the applicant in New York. This envelope bears a postmark date of October 24, 1982.
- Affidavits and declarations from [REDACTED] as follows:
 - An affidavit notarized March 18, 2005. The affiant states that he helped the applicant prepare an application for an immigration benefit as a CSS/LULAC member between 1987 and 1988. It is noted that the settlement agreements the affiant refers to had not yet been reached in 1988. The affiant goes on to state that the applicant was refused when he attempted to apply because of a brief absence and subsequent return without inspection in 1986. The affiant also states that he knows that the applicant has resided in the United States since 1981, when he arrived by ship. He states that the applicant resided with [REDACTED] in Brooklyn from June 1981 until November 1986 and then resided with the affiant in Woodside, New York from December 1986 until December 1988.
 - An affidavit notarized October 10, 1992. The affiant states that he shared a room with the applicant from December 1986 until December 1988. He states that the longest period that he did not see the applicant for was for one month in 1988.
- Unsigned declarations from [REDACTED] and [REDACTED]. Because these declarations are not signed, though they contain testimony regarding the applicant's residence during the requisite period, they cannot be accorded any weight as evidence.

The applicant also submitted additional documents that are either not dated or that do not clearly indicate whether they pertain to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to satisfy his burden of proving that he resided in the United States during the requisite period. Therefore, evidence that does not clearly pertain to that period is not relevant to this proceeding and is not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on January 19, 2006. In the NOID, the director stated that though the applicant submitted affidavits in support of his application, he failed to submit proof of his initial entry into the United States through the Bahamas or to submit proof that affiants from whom he submitted evidence had direct personal knowledge of the events and circumstances of his residence. The director stated that credible affidavits include: a document identifying the affiant; proof that the affiant was in the United States during the requisite period; and proof that there was a relationship between the applicant and the affiant. The director noted that the affidavits from the applicant did not meet these criteria. The director further questioned testimony from affiants who stated they had personal knowledge of his September 1986 absence yet first met the applicant after this absence occurred. The director noted that the affidavit from [REDACTED] of the Madina Masjid was not submitted with

documentation of the applicant's membership with the Masjid. The director concluded by stating that the applicant failed to satisfy his burden of proof with the evidence submitted. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted the following evidence that is relevant to his claim that he maintained continuous residence during the requisite period:

- A declaration from the applicant that is dated February 10, 2006. The applicant states that he does not have evidence of his first entry into the United States because an agent took away his passport. He states that he is submitting additional evidence and requests that the director consider his case on humanitarian grounds.
- An additional affidavit from [REDACTED] that was notarized on February 6, 2006. Though the affiant submits an affidavit and a photocopy of the identity page of his United States passport, this affidavit states that the affiant met himself, [REDACTED] in 1981. The affiant does not provide testimony pertaining to the applicant. Therefore, this affidavit can be accorded no weight as evidence of the applicant's residence in the United States during the requisite period.
- Evidence from [REDACTED] as follows:
 - An affidavit notarized on February 9, 2006. The affiant submits a photocopy of his New York State Driver's License and states that the applicant entered the United States in June 1981 without inspection. He states that he first met the applicant before January 1, 1982. However, he does not indicate when or where he first met the applicant or whether he first met him in the United States.
 - An unsigned, undated declaration. Because this declaration is not signed or dated, it cannot be accorded any weight as evidence of the applicant's residence in the United States during the requisite period.
- Evidence from [REDACTED] as follows:
 - An affidavit notarized on February 4, 2006. The affiant submits a photocopy of his New York State Driver's License with his affidavit. The affiant states that the applicant entered the United States in June 1981 without inspection. He states that he first met the applicant before January 1, 1982. However, he does not indicate when or where he first met the applicant or whether he first met him in the United States.
 - An unsigned, undated declaration. Because this declaration is not signed or dated, it cannot be accorded any weight as evidence of the applicant's residence in the United States during the requisite period.
- A second declaration on letterhead of the Islamic Council of America, Madina Masjid that is signed by [REDACTED] and dated February 10, 2005. In this declaration, Mr. [REDACTED] states that when he was the Imam of the Madina Masjid from 1982 to 1986, he used to see the applicant "sometimes" during Friday prayers and on Islamic holidays. However, the affiant fails to state when

the applicant became a member of the Masjid or the frequency with which the applicant attended Friday prayers during the requisite period. Because this declaration is lacking with regards to the requirements found in the regulation at 8 C.F.R. § 245a.2(d)(3)(v), it can be accorded only minimal weight as evidence that the applicant resided in the United States during the requisite period.

- A declaration from the Bangladesh Society signed by Fakhru Alam, who states that he has known the applicant for 20 years and that the applicant has been a member of the Bangladesh Society in New York since 1985. However, Mr. [REDACTED] does not indicate how he was able to verify the applicant's start date as a member of the Bangladesh Society. He fails to state the frequency with which the applicant participated in events affiliated with the Society. Because this declaration is lacking with regards to the requirements found in the regulation at 8 C.F.R. § 245a.2(d)(3)(v), it can be accorded only minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period. Further, as the applicant has also submitted the previously noted new member application form dated in 2003, doubt is cast on whether the applicant became a member of this society in 1985.
- A declaration from [REDACTED], who indicates that he is a medical doctor and states that the applicant was first examined by him on May 30, 1983 because he had an ulcer. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of "medical records showing treatment of hospitalization of the applicant." The regulation further provides that these records "must show the name of the medical facility or physician and the date(s) of the treatment." This declaration fails to provide medical records showing the medical treatment of the applicant. The declaration also fails to indicate the source of information Dr. [REDACTED] referred to in order to obtain the applicant's May 30, 1983 start date as his patient. Because it is significantly lacking in detail, this declaration can only be accorded very minimal weight as evidence that the applicant was present in the United States on May 30, 1983.

The director denied the application for temporary residence on February 16, 2006. In denying the application, the director noted the applicant's explanation regarding why he did not have documents to prove his entry into the United States in June 1981. However, she stated that the applicant did not submit sufficient documentation to establish that he entered the United States before January 1, 1982. The director went on to state that though the applicant submitted additional affidavits from [REDACTED] and [REDACTED] in support of his application in response to the NOID, these additional affidavits continued to fail to meet the director's criteria for credible affidavits. The director went on to state that the affidavit from [REDACTED] and the [REDACTED] of the Bangladesh Society were not submitted with other evidence of the applicant's membership in either the Masjid or the Society. The director stated that the declaration from [REDACTED] was limited to the date May 30, 1983 and that therefore, the document could not place the applicant in the United States for the duration of the requisite period. The director concluded by stating that the applicant continued to fail to satisfy his burden of proof.

On appeal, the applicant submits a brief and additional evidence for consideration.

The applicant's brief states that though he may have failed to provide sufficient evidence in support of his application, the director should have considered humanitarian grounds in making her decision.

The applicant also submits the following additional evidence in support of his application:

- An additional affidavit from [REDACTED] that is dated February 24, 2006. The affiant submits a photocopy of his New York State Driver License and the identity page of his United States Passport and states that he has known the applicant since July 1981. The affiant also submits a photocopy of a bank passbook that indicates that he made bank transactions in the United States at the Dime Savings Bank of New York beginning in August 1981 and tax documents from 1982, 1983 and 1984. The affiant states that the first time he met the applicant was in Brooklyn, when he went to visit his friend named [REDACTED]. He states that he knows the applicant was in the United States in 1986, 1987 and 1988. However, the affiant does not state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant traveled to Bangladesh from September 10, 1986 until October 15, 1986, he does not state whether there were periods of time other than that absence when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An additional affidavit from [REDACTED] dated February 24, 2006. The affiant submits a photocopy of his New York State Driver's License and states that he first met the applicant at his home when the applicant came to him for help. He states that he knows the applicant was continuously present in the United States from June 1981 until the present. However, the affiant does not state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant traveled to Bangladesh from September 10, 1986 until October 15, 1986, he does not state whether there were periods of time other than that absence when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An additional affidavit from [REDACTED] notarized on February 11, 2006. The affiant submits a photocopy of his New York State Driver's License and a photocopy of his United States Passport and states that he first met the applicant at the Madina Masjid in December 1981 when he went there to pray. It is noted that the applicant has previously stated on his Form I-687 that he became a member of the Masjid in 1983. Therefore, doubt is cast on this affiant's statement that he saw the applicant at the Masjid prior to that time. Though the affiant states that he knows the applicant has continuously been present in the United States from January 1, 1982 until May, 1988, the affiant does not state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant traveled to Bangladesh from September 10, 1986 until October 15, 1986, he does not state whether there were periods of time other than that absence when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on February 24, 2006. The affiant submits proof of his presence in the United States prior to January 1, 1982 and a photocopy of the identity page of his United States passport. The affiant states that he first met the applicant at [REDACTED] in Brooklyn, when he was visiting his friend [REDACTED] in

December 1981. Though the affiant states that he knows the applicant has continuously been present in the United States from January 1, 1982 until May, 1988, the affiant does not state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant traveled to Bangladesh from September 10, 1986 until October 15, 1986, he does not state whether there were periods of time other than that absence when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

- A declaration dated July 20, 1984 on which [REDACTED], who indicates that she is a customer service manager of the Chemical Bank, states that if the applicant wishes to continue his bank account, he must provide a social security number. This declaration does not indicate when the applicant opened an account with the bank or specify when any transactions with the bank occurred. Therefore, it does not establish the applicant's presence in the United States prior to July 20, 1984.
- A photocopy of a letter from the Islamic Council of America that was notarized on May 16, 1987 and is signed by [REDACTED], who indicates he is the assistant secretary and states that he has known the applicant since 1981. However, he does not state where he first met the applicant or whether he first met him in the United States. As was previously noted, the applicant indicated that he became a member of the Madina Masjid, which is affiliated with the Islamic Council of America, in 1983. The affiant does not state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant traveled to Bangladesh for one month in September 1986, he does not state whether there were periods of time other than that absence when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

Though the applicant has submitted additional evidence in support of his claim that he maintained continuous residence in the United States for the duration of the requisite period, this evidence is not sufficient to satisfy his burden of proof. Affiants [REDACTED], [REDACTED], and [REDACTED] do not state the frequency with which the affiants saw the applicant during the requisite period or indicate whether there were periods of time during that period when they did not see the applicant. Their affidavits are significantly lacking in detail such that they can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period. Further, the applicant has stated that he became a member of the Bangladesh Society in 1985 but has also submitted a photocopy of a new membership form indicating that he applied to become a new member of that society in 2003. This casts doubt on his claim that he was a member of the Society during the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.