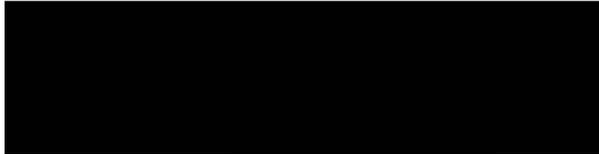


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED]
MSC-05-022-10184

Office: NEW YORK

Date: **SEP 15 2008**

IN RE: Applicant: [REDACTED]

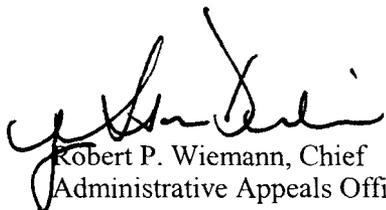
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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 addresses the discrepancies cited in the denial notice.

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. 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 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 October 22, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States as [REDACTED], Brooklyn, New York from May 1981 until June 1989. At part #33, he showed his first employment in the United States as a construction laborer with [REDACTED] at [REDACTED] Brooklyn, New York from October 1981 until September 1987.

The applicant submitted copies of the following documentation:

- A form letter from [REDACTED] notarized on December 21, 1992. This affidavit in pertinent provides, “[t]he above named applicant is known to me since 1982. . . . That he entered the United States before January 01, 1982 and has been residing continuously in an unlawful manner today. . . .” This affidavit fails to establish the origin of the information [REDACTED] has attested to. There is no information on how [REDACTED] first became acquainted with the applicant. Nor is there any information on the frequency of their contact during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- An aerogramme from Bangladesh, bearing a postmark date of July 18, 1983. The applicant has not furnished any other postmarked envelopes. As a result, this document only constitutes probative evidence of the applicant's residence in the United States in July 1983.

A form letter from [REDACTED], Secretary, Bangladesh Society Inc., New York, notarized on December 10, 1999. This letter provides that the applicant has been an active member of the organization since 1984. It states, "He has a great contribution towards the development of this organization. He is honest, active, sincere and hard working individual." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) state that attestations by organizations should: show the addresses where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these delineated guidelines. Furthermore, the applicant indicated on his Form I-687 that he has never been affiliated or associated with any organizations in the United States. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED], notarized on December 10, 1990. This letter provides, "I [REDACTED] hereby swear that I have known to [sic] [REDACTED] since 1982. . . . I have personal knowledge that [REDACTED] left the United States to visit his relatives 10/87 and returned 12/87." This letter fails to establish the origin of the information [REDACTED] has attested to. There is no information on how [REDACTED] first met the applicant. Nor is there any information on their relationship in the United States during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], notarized on October 14, 1991. This letter provides, "I, [REDACTED], . . . do hereby certify that [REDACTED] . . . is well known to me since 1983. Sometimes I visited him in his house. We are always associated on friendly terms. He is also my close friend and well wisher. . . ." This letter fails to indicate whether [REDACTED] first met the applicant in the United States or abroad. There is no information on how they first became acquainted with each other. Furthermore, the letter states that [REDACTED] visited the applicant at his house, but does not indicate when he visited the applicant or the location of the applicant's home. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], notarized on October 12, 1991. This letter provides, "This is to certify that [REDACTED] . . . is my cordial friend [sic] well wisher. On January, 1988 I went to the Legalization Office with him to file his application for adjustment of status. He brought with him all his supporting documents and fees. But the INS officer denied [sic] to accept his application. . . ." This letter fails to establish the date [REDACTED] first became acquainted with the applicant in the United States. There is no indication that [REDACTED]

had contact with the applicant prior to January 1988. As a result, this document only constitutes probative evidence of the applicant's residence in the United States in January 1988.

- A letter from [REDACTED], notarized on April 26, 1991. This letter provides, "[REDACTED] had been living with me at the above address from [sic] 05/1981 to 06/1989 by sharing house rent, electricity bills, gas bills and other utility bills etc. . . ." The address provided in this letter is [REDACTED], Brooklyn, New York 11218. This letter fails to provide any details on their living agreement or arrangement during the requisite period. Furthermore, the letter fails to explain how [REDACTED] first became acquainted with the applicant. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], notarized on June 29, 1999. This letter provides, "This is to certify that [REDACTED] had been living with me from January, 1986 to April, 1995 by sharing all utility bills. . . ." The address listed on this letter is [REDACTED], Brooklyn, New York 11218. However, the applicant's Form I-687 shows that he was residing at [REDACTED], Brooklyn, New York from May 1981 until June 1989. The applicant's Form I-687 shows he resided at [REDACTED] from June 1989 until April 1995. Furthermore, the letter fails to explain how [REDACTED] first became acquainted with the applicant. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] located in Brooklyn, New York, notarized on March 29, 1993. This letter provides, "[M].r. [REDACTED] worked with us from 01/1988 to 06/1995 as a construction laborer. His wages was [sic] \$5.50 per hour which was paid in cash. He was very conscientious [sic] worker, intelligent and hard working person." Notably, this letter fails to provide the full name and title of its author. The letter only indicates that it has been signed by "M.D." Furthermore, the letter fails to comply with regulatory guidelines for employer letters. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers should state: the applicant's address at the time of employment; duties with the company; whether the information was taken from official company records; and where such records are located and whether CIS may have access to the records. If the applicant's employment records are unavailable, the employer may issue an affidavit form-letter stating that the records are unavailable and the reason such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i). This letter from Mohiuddin Contracting fails to satisfy the delineated guidelines. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] Proprietor, A.P. Construction Co., located in Brooklyn, New York, notarized on December 10, 1990. This letter provides, "[REDACTED] [sic] well known to me since 1981. He also worked under the management of this company as a labor from 10/1981 to 09/1987. He was paid \$5.00 per hour in cash." This letter also fails to

comply with the above cited regulations at 8 C.F.R. § 245a.2(d)(3)(i). The letter does not indicate the applicant's duties with the company and address(es) at the time of employment. Nor does it indicate whether the information in the letter was taken from official company records. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On July 5, 2007, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant did not submit evidence of his entry into the United States. The director noted that the applicant claims he had an absence from the United States from October 24, 1987 until December 10, 1987. The director determined that the applicant's absence was for approximately 46 days and it disrupts his requisite period of continuous residence in the United States. The director noted that the applicant has not shown an emergent reason for the length of his absence.

In rebuttal to the NOID, the applicant submitted an affidavit, which states:

I arrived into the United States without documents, and certainly without inspection, since the year May 18, 1981, as I informed you in the interview, I took an airplane from Miami, Florida, to JFK, New York City. Unfortunately, Eastern Airlines was under bankrupt on the year 1989, I did numerous intents to obtain the records, and it was impossible. . . . I must open a federal petition to obtain a record from this company. Unfortunately, I am not able to file a federal petition, because I do not have a legal status, and this will have legal costs, that I can not afford now. About the departure to see my family for more than 30 days, I went to see my mother who were under a very delicate health situation, and I could care of her during the period October 24, 1987 to December 10, 1987. My mother was under the last days to died, however, my visit contributed to my mother recuperate from her delicate health situation.

[errors in the original]

On August 2, 2007, the director issued a notice to deny the application. In denying the application, the director noted that the applicant submitted a self-serving affidavit stating that he was absent for more than 45 days because his mother was critically ill. The director noted that the applicant did not submit any supporting documents to verify this information, and the applicant failed to provide this information during his interview and on his Form I-687. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant reiterates the assertions he made in rebuttal to the NOID. The applicant states that he will submit proof of his mother's illness. The applicant indicates that this proof will take more than three months to obtain from Bangladesh. The applicant filed his appeal notice on August 22, 2007. As of the date of this decision, the applicant has not submitted any additional evidence in support of his application.

According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation.

The applicant submitted with his application a completed "Form for Determination of Class Membership in CSS v. Thornburgh (Meese)." The form shows that it was signed by the applicant under penalty of perjury on June 11, 1991. This document shows that the applicant was absent from the United States from October 24, 1987 until December 10, 1987, which is a period of 46 days. Pursuant to 8 C.F.R. § 245a.2(h)(1), if the applicant's absence exceeds the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant indicated that his absence was due to his mother's critical illness, which was certainly a valid basis for the applicant's departure from the United States. However, the explanation put forth by the applicant leads to a conclusion that he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. The applicant could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

Furthermore, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the entire requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, copies of nine notarized letters and an aerogramme from Bangladesh. Eight of the letters lack considerable detail on the authors' relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. The letter that is of some probative value, from [REDACTED] provides detailed information on his relationship with the applicant in the United States in January 1988. However, the letter offers no information on their relationship in the United States prior to this date. Therefore, the probative value of this document is limited to the applicant's residence in the United States in January 1988. The aerogramme from Bangladesh bears a postmark date of July 18, 1983. Therefore, the probative value of this document is limited to applicant's residence in the United States in July 1983. Although the applicant has provided proof of residence in the United States in July 1983 and January 1988, such proof does

not cover the entire requisite period. Thus, the applicant is ineligible for temporary resident status for this additional reason.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.