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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK Date: AUG 22 2007

MSC-05-187-26765

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 director determined the applicant had not provided additional evidence in response to the Notice of Intent to Deny (NOID) issued on February 7, 2006. As a result, she denied the application.

On appeal, the applicant's attorney stated that the applicant never received the NOID and, as a result, he was never given an opportunity to respond to it.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

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 applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 and 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 (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 he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on April 6, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed the following address during the requisite period: [redacted] Elmhurst, New York from April 1980 to July 1992. At part #33 where applicants were asked to list employment in the United States since entry, the applicant listed the following position during the requisite period: [redacted] Brooklyn, New York from February 1981 to August 1990.

The applicant submitted numerous affidavits with his Form I-687 application. [redacted] President of Bangladesh Humanity and Environment Council (BHEC), signed an affidavit stating that the applicant has been an active member of BHEC since August 1983. The letterhead on which the affidavit appears indicates BHLC is a worldwide organization, and the affidavit does not specifically verify that the applicant was a member of BHEC in the United States or that he resided in the United States during the requisite period.

The applicant also submitted an affidavit from [redacted] In this affidavit, the affiant explained he has known the applicant since 1982, that the applicant entered the United States before January 1, 1982 and that the applicant has been residing continuously in an unlawful manner until the date of the letter, which was March 11, 1993. The affiant failed to explain the nature of his relationship with the applicant, and he failed to explain how he could confirm the applicant entered the United States prior to January 1, 1982 when he did not become acquainted with the applicant until 1982. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to confirm the applicant's residence during the requisite period. In addition, the affiant is

found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, since the affiant confirmed he did not know the applicant until 1982.

The applicant submitted a similar affidavit from [redacted] who stated that he has known the applicant since 1983. The affiant confirmed that the applicant came to the United States before 1982. However, he failed to explain how he can confirm the applicant's entry into the United States when he did not meet the applicant until 1983. The affiant also failed to explain how he came to know the applicant. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period. As a result of the fact that the affiant did not come to know the applicant until 1983 and the fact that the affidavit lacks detail, this affidavit does not confirm that the applicant resided continuously in the United States throughout the requisite period.

Another affidavit, from [redacted] does not confirm the applicant's residence during the requisite period. This affidavit merely confirms that the applicant has been the affiant's close friend since 1982 and visited the affiant often, and that the affiant worked on construction projects with the applicant at various times.

[redacted] affidavit confirmed that the affiant is a good friend of the applicant and lived with the applicant. The affiant also confirmed that the applicant entered the United States prior to January 1, 1982 and has been residing continuously in an unlawful manner since then, until the date the affidavit was signed on July 11, 1990. The affiant failed to include information regarding when he became acquainted with the applicant and the dates during which they lived together. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period.

[redacted] provided an affidavit in which he identified himself as the applicant's distant relative and confirmed the applicant's residence in the United States throughout the requisite period. However, the affiant failed to explain how he is able to confirm the applicant's residence although he did not claim to have been in the United States during the requisite period. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.

[redacted] owner of [redacted] General Contracting Co., provided an affidavit stating that the applicant worked with the affiant's contracting company from February 1981 to August 1990. Letters from employers submitted as proof of residence must conform to specific standards. This includes the requirement that the letter specify whether or not the employment information was taken from official company records, where the records are located, and whether the Immigration and Naturalization Service (INS), currently CIS, may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit did not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that it failed to provide information regarding the company's employment records and whether the applicant's information was taken from such records.

The affidavit from [redacted] states that the affiant lived with the applicant at [redacted] Elmhurst, New York from April 1980 to July 1992. The affidavit refers to the applicant and the affiant having shared "house rent, gas bills, electricity bills and other utility bills," but the applicant failed to provide copies of any utility bills for the address, either in the applicant's name, the affiant's name, or the name of another person.

The director issued a NOID on February 7, 2006 to the applicant at his most recent address, [redacted] East Elmhurst, New York. The director explained that the applicant had not demonstrated eligibility for the benefit sought. Specifically, the director found that affidavits the applicant had submitted failed to include evidence that the affiants had direct personal knowledge of the events to which they were attesting. A response to the NOID was never received, and the record indicates the NOID was never returned as undeliverable by the postal service.

In denying the application on April 7, 2006, the director explained that the applicant had failed to submit additional evidence in response to the NOID. It is noted that the director issued the notice of denial to the same address to which she issued the NOID.

On appeal, the applicant explained that he had received the same notice of denial two times, in April 2006 and on August 4, 2006. The applicant submitted two Form I-694 appeal forms. The first appeal form was timely filed. In his first appeal, the applicant's attorney explained that the applicant had never received the NOID and, as a result, was never given an opportunity to respond to it. It is noted that the applicant's most recent Form I-694 appeal, submitted on August 11, 2006, listed as the applicant's address the same address to which both the NOID and the decision had been issued.

In denying an application for temporary resident status, the applicant shall be notified in writing of the decision and of the reason therefore. 8 C.F.R. § 245a.2(o). There is no general requirement to issue a NOID prior to denying an application for temporary resident status. One exception is found in Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement, which both indicate a notice of intended denial shall be provided to the applicant in cases where the applicant's Class Member Application is found to be deficient. Since the current issue does not relate to class membership, CIS was not required to issue a NOID. Since the NOID was issued to the applicant's current address and not returned, and the applicant failed to respond to the NOID, the decision was properly issued by the director.

It is noted that the record includes a Form I-130 Application for Alien Relative filed by [redacted] on behalf of the applicant on December 4, 2001. At part #C 14, where applicants were asked about their relative's arrival to the United States, [redacted] stated that the applicant arrived as a visitor on August 14, 2001. Attached to this application was Form G-325A, signed by the applicant. Where the applicant was asked to list his last address outside the United States of more than one year, the applicant indicated he had lived at an address in Pakistan from January 1938 until August 2001. This statement is found to be inconsistent with the applicant's statements on his Form I-687 related to his residence in the United States. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and his claim of continuous residence directly conflicts with his earlier claim on Form G-325A that he lived in Pakistan continuously until August 2001. In addition, the applicant has submitted affidavits that lack sufficient detail or fail to verify that the affiant holds direct personal knowledge of the events to which he attests. Specifically, the affidavit from [redacted] fails to specifically verify that the applicant resided in the United States during the requisite period. The affidavit from [redacted] indicates the applicant entered the United States prior to January 1, 1982 without explaining how the affiant could have direct personal knowledge of this when he did not meet the applicant until sometime in 1982. The affidavit from [redacted] confirms the applicant came to the United States before 1982, but failed to explain how he could have direct personal knowledge of this when he did not meet the applicant until 1983. The affiant also failed to explain how he came to know the applicant. [redacted] affidavit does not specifically confirm the applicant's residence in the United States throughout the requisite period. [redacted] affidavit confirmed the applicant's residence in the United States during the requisite period, but failed to explain how he had direct personal knowledge of the facts to which he attested. Specifically, the affiant failed to include information regarding when he became acquainted with the applicant and the dates during which he lived with the applicant. [redacted] affidavit confirmed the applicant's residence during the requisite period. However, the affiant did not claim to have been in the United States during the requisite period and failed to explain his direct personal knowledge of the applicant's residence during the requisite period. [redacted] affidavit failed to conform to standards set for employer letters. [redacted]s affidavit referred to having shared utility bills with the applicant, but the applicant failed to provide copies of utility bills for their place of residence.

The absence of sufficiently detailed and consistent 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. Given the contradictory statements contained in the applicant's I-687 application, Form G-325A, and supporting affidavits, and given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he 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--, 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.