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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 12 2007

MSC 05 244 10169

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. 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 demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant provides additional evidence in support of his claim.

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 applying 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 alien 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 alien applying 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, its credibility and amenability to verification. *See* 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.

Further, regarding past employment records, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them.

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 Service in the original legalization application period of May 5, 1987 to May 4, 1988.

In support of his application, which was filed on June 1, 2005, the applicant provided the following documentation:

1. A notarized employment letter dated August 27, 1991 from [redacted] claiming that the applicant worked for India Bazaar, Inc. from July 1981 to January 1988. It is noted that the letter fails to state the applicant's address at the time of employment and does not indicate where, if at all, records of the applicant's employment may be found. Additionally, the dates of employment as claimed by [redacted] are inconsistent with the applicant's own claim at No. 33 of the Form I-687, where the applicant claimed that his employment with India Bazaar commenced in December 1980.

2. An affidavit dated May 6, 2005 from [redacted] claiming that he has known the applicant since August 1981, which he states was one month after the applicant's arrival to the United States. The affiant stated that the applicant used to live at [redacted] NY 11238. The affiant discussed, in general, his visits to the applicant's

residence and later referred to the applicant's arrival to the United States in July 1980. Thus, the affiant made two contradictory statements with regard to the applicant's date of arrival to the United States. Additionally, in No. 30 of the Form I-687, the applicant claimed that his only residence in the United States since the time of his arrival has been at [redacted] New York. The applicant never claimed to have resided at [redacted]

3. An affidavit dated February 9, 2005 from [redacted] claiming to have known the applicant since November 1981. The affiant stated that he used to meet the applicant once per week to discuss the growth of the Bangladesh community. The affiant failed to provide any verifiable information regarding the applicant's U.S. residence, including the applicant's address during the time period of his acquaintance with the affiant. Additionally, the affidavit was notarized on May 12, 2005, which is three months after the applicant wrote, and possible signed, the document.

4. An affidavit dated May 9, 2005 from [redacted] claiming to have known the applicant since January 1982. Mr. [redacted] claimed that he and the applicant used to get together to do community work and help members of their community. It is noted that the affiant failed to specifically attest to his knowledge of the applicant's residence in the United States specifically as of January 1, 1982. The affiant also failed to provide any verifiable information regarding the applicant's residence, including the applicant's address during the time period of his acquaintance with the affiant. The affiant stated he used to get together with the applicant "occasionally and non[-]occasionally." Therefore, it is unclear how often the affiant saw the applicant.

5. An affidavit dated May 13, 2005 from [redacted], claiming to have known the applicant since January 1982. The affiant stated that he and the applicant used to live together and that the applicant paid $50 per month for food and lodging. The affiant also claimed that the applicant came to the United States in July 1980 and that the two used to work together doing construction labor. Again, the affiant failed to specifically attest to his knowledge of the applicant's U.S. residence specifically as of January 1, 1982 and did not clarify how he could have known that the applicant came to the United States in 1980 when he did not claim to have met the applicant until 1982. Although the affiant claimed to have worked and resided with the applicant in the past, he did not provide the name of a specific employer or the address where the two cohabitated.

6. An affidavit dated May 11, 2005 from [redacted] claiming that the applicant used to work with him in construction from February 1981 to 1985. He stated that the applicant arrived to the United States in July 1980 and claimed that the two used to meet socially at [redacted] The affiant failed to specify the name of the employer he claims to have shared with the applicant and does not provide any specific verifiable information.

7. A letter dated November 19, 1989 from Nazir Sinha, welfare secretary for [redacted]., claiming that the applicant has been associated with the organization since January 1981and has volunteered and participated in a variety of community functions. No specific verifiable information has been provided with regard to the applicant's U.S. residence during the relevant time period.

Accordingly, the district director issued a notice of intent to deny dated March 14, 2006. In response, the applicant submitted two additional affidavits:

1. An affidavit dated April 12, 2006 from [redacted] Mr. [redacted] stated that he bought the house at [redacted] in 1990. He claimed that when he first came to see the house, the applicant was already residing there and was told by the applicant that such residence commenced in 1981.

2. An affidavit dated April 12, 2006 from [redacted] claiming that the applicant has known him since 1980 and that he has known of the applicant's residence in the United States since prior to January 1, 1982.

As with the documents previously submitted, the supplemental documentation is also deficient. With regard to the affidavit in No. 1 above, the affiant's claim of the applicant's U.S. residence during the statutory time period is not based on the affiant's first-hand knowledge, but rather is based on information obtained from the applicant himself. With regard to the affidavit in No. 2 above, the affiant fails to provide any specific verifiable information with regard to the applicant's alleged U.S. residence during the relevant time period.

On appeal, the applicant supplements the record with an undated first page of a residential lease for [redacted] NY. The lease was for a two-year term beginning May 1982 and ending in April 1984. The tenant named in the lease was [redacted] This individual's relationship to the applicant, if any, has not been explained. Additionally, the lease was not submitted with a signature page, therefore bringing into question the document's probative value and its validity. The applicant also submitted an affidavit dated November 29, 1990 from [redacted] who claimed that he used to see the applicant in grocery stores and often while the applicant was waiting for someone to pick him up from his construction job. Although the affiant stated that the applicant has resided a[redacted]. in Brooklyn, New York, the apartment number portion of the street address has been altered by hand. It is unclear who altered it and why; nor is there any information as to the original unaltered version of the affidavit.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. As previously discussed, there is no indication that the first page of an unsigned lease pertains to the applicant; and if it does, there is insufficient documentation to establish that the lease is valid. The remaining supporting documentation consists of attestations from affiants whose statements are either too general to verify or are inconsistent with the applicant's own claim.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim, particularly when the documentation is inconsistent with attestations made by the applicant himself. It is incumbent upon the petitioner 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 significant deficiencies in the documentation submitted by the applicant in the present matter, it is concluded that the applicant 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-*,20 I&N Dec. 77. 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.