U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: APR 07 2008

FILE: [redacted] Office: NEW YORK

MSC-05-334-11915

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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, denied the application for temporary resident status filed 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). 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, on August 30, 2005 (together comprising the I-687 Application). 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.

In a Notice of Intent to Deny, issued on March 31, 2006, the Director specifically noted that the applicant indicated that he initially entered the United States in January 1981 with his father via Canada. He did not submit any evidence of such entry, nor do Service records indicate such entry. The Applicant also claims to have resided continuously in unlawful status from January 1981 until May 4, 1988.

Further, the Director noted that during the I-687 interview, the applicant stated that he left the United States in 1986 for approximately one year. He stated that he returned to Bangladesh with his father who was ill. The Director noted that this departure represents a clear break in residency as it is far in excess of a single absence of 45 days.

Applicant was afforded 30 days to provide additional evidence to establish eligibility for the benefit. In response to the Notice of Intent to Deny, applicant submitted additional documentation that he claimed establishes that he was present in the United States prior to January 1982 and resided there continuously through the requisite period. Upon review of the evidence, the Director denied the application on July 5, 2006, finding that the applicant had failed to overcome the grounds for denial and, as the applicant had not met his burden of proof, he was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he had submitted evidence that clearly shows that he was in the United States prior to January 1, 1982 and that he is eligible for the benefit sought. He submits a brief in support.

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 from November 6, 1986 until the date of filing the application. 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 during the initial legalization filing 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 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to affidavits indicating specific personal knowledge of the applicant's whereabouts during the time period in question rather than fill-in-the-blank affidavits that provide generic information.

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 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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. In this case, the applicant has failed to meet this burden.

The applicant has submitted several documents as evidence that he was in the United States during the requisite period. The following evidence relates to the requisite period:

- An affidavit from [redacted], residing at [redacted], Montreal, Q.C. Canada. The affiant certifies that "on January 3rd, 1987 [redacted] came to Canada on a brief visit and stayed with me at my residence for a few days prior to leaving for New York. He informed me that he had previously been in the USA and had gone to Sri Lanka to attend to an urgent private family matter in December 1986 . . . he left my residence to go to New York on January 8th, 1987 and contacted me to thank me after he arrived there." It is noted that [redacted] does not have first-hand knowledge of the applicant's residence in the United States. Therefore, his affidavit will be given no weight.

- An affidavit from [redacted] of [redacted], Staten Island, New York 10303. The affiant certifies that he owned the property at [redacted] from 1981 until 1984 and that the applicant rented an apartment in his building during this time. He also certifies that the applicant moved with him to [redacted], Staten Island, New York in December 1984, also renting an apartment in his building. He does not provide any evidence of this in the form of lease agreements, rental receipts, utility bills nor does he provide a date that the applicant left his residence. Further, the affiant states that the applicant worked as a cleaner for [redacted]'s Cleaning Service during January 1987 until December 1989. The affiant provided a nearly illegible business registration form demonstrating that he owned and operated a business during the statutory period. He did not attest to direct personal knowledge of the events and circumstances of the applicant's continuous residency and he did not provide any additional evidence that would confirm the employment relationship such as paycheck stubs, employment records, photos or business documents. The applicant did submit [redacted]'s business and personal tax returns for the years 1990, 1991, and 1992, however they are not certified or relevant to the requisite period. He also submitted a Certificate of Discontinuance of Business from [redacted]'s Cleaning Service dated February 4, 1999, a copy of his Social Security Statement of Earnings from 1956 through 1995, and a Verizon Account Summary in [redacted]'s name, dated April 9, 2006. These documents are not relevant to establishing the applicant's entry prior to January 1, 1982 or his continuous residence during the statutory period. Further, the Service made several attempts to contact [redacted] and verify the statements from the affidavit but were unable to reach him. Aside from [redacted]'s personal statement that the affiant rented an apartment from him for a portion of the relevant period, the affidavit and supporting documents from [redacted] have very minimal weight as evidence of the applicant's initial entry prior to January 1, 1982 or his continuous residence in the United States during the requisite period.

- A notarized letter from [redacted] dated March 29, 2006. [redacted] claims to be the daughter of [redacted]. In the letter she writes that she is aware that her father "was conducting a cleaning service business under the name of [redacted]'s Cleaning Service in Staten Island, New York." She also writes that she is "aware that my father resided at [redacted] Staten Island, New York (1981 through 1984) and [redacted], Staten Island, New York (1985 through 1990)." [redacted] provides her address, but no telephone number. The letter provides no further details regarding the circumstances of the applicant's residence in the United States or of the claimed landlord/tenant, or employer/employee relationship between the applicant and [redacted]'s father, [redacted]. It gives no indication that [redacted] has any specific personal knowledge of the applicant's whereabouts during the relevant time period other than that her father lived at the address where the applicant claims to have lived during the relevant period. The letter can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Applicant also submits an affidavit from [redacted] Staten Island, New York 10309. [redacted] states that he "met [redacted] for the first time in 1981 November when he came to clean my home . . . since then until 1989 December I called him to clean my house intermittently." He also states "I remember in December 1986 Upul went to Sri Lanka to drop his father who was sick" and that "he told me that he came to New York on January 8, 1987 through Canada." The record does not contain any evidence of Mr. [redacted]'s claim that the applicant worked for him as a cleaner. In fact, the applicant was only 14 years old in November 1981, the date that [redacted] states that he met the applicant. [redacted] also states that he "remembers in December 1986 Upul went to Sri Lanka to drop [sic] his father who was sick." However, he further explains "I remember he told me that he came to New York on January 8, 1987 through Canada." Therefore, Mr. [redacted]'s statements offer no first hand information, aside from his memory of the applicants claim, that the applicant entered the United States in January 1987. In fact, they directly contradict statements that the applicant made during his March 30, 2006 interview in connection with the I-687 application in which he stated that he left the United States in 1986 for about one year. Additionally, on the I-687 application the dates indicating the applicant's trip to Sri Lanka in 1986 have been altered with liquid paper. Thus, [redacted]'s statements offer minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- The applicant failed to submit additional credible and verifiable evidence to contradict his earlier assertion in his March 30, 2006 interview that he left the United States in 1986 and was absent for one year. This represents a clear break in residency as it is in excess of a single absence of 45 days.

The remaining evidence in the record is comprised of the applicant's statements and I-687 Application, in which he claims to have entered the United States in November 1981 and resided

in New York until 1989, with only a brief 26 day departure in 1986 to accompany his ill father back to Sri Lanka. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry in 1981 and residence in New York are not supported by any credible evidence in the record.

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 documentation in support of his application, and the inconsistencies and contradictions noted above, the applicant 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.