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**U.S. Citizenship
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Services**

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FILE: [REDACTED]
MSC-06-095-11730

Office: NEW YORK

Date: **APR 17 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. 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 asserts that the director's denial was arbitrary and prejudiced, that she failed to give due weight to the evidence he submitted and that he effectively rebutted the discrepancies in his statements.

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)(1) 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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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 or her 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 January 3, 2006. 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 listed [REDACTED] Elmhurst, New York, from October of 1981 to March of 1983, and from May of 1983 to September of 1986; and [REDACTED] Sunnyside, New York, from September of 1986 to June of 1989. Similarly, at part #33, he listed his first employment in the United States as self-employment as a newspaper salesperson from December of 1981 to February of 1991.

The record of proceeding contains the following documentation submitted by the applicant along with his Form I-687 dated October of 1991:

- A letter from Pronto Video dated March 3, 1991 in which the store representative stated that the applicant worked as a counter person for the video store from February of 1984 to May of 1988. This information is inconsistent with the information provided by the applicant on his 2006 Form I-687 application, part #33 where he listed his employment as a self-employed newspaper salesperson from December of 1981 to February of 1991. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made by the declarant. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of

the remaining evidence offered in support of the visa petition. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because this declaration directly conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States throughout the requisite period.

- A letter from [REDACTED] in which he stated that the applicant lived in his apartment at [REDACTED] Bronx, New York, from March of 1981 to May of 1984, and that they shared the rent and utilities during this period. This information is inconsistent with the information provided by the applicant on his Form I-687 application, part #30 where he listed his address as [REDACTED] Elmhurst, New York, from October of 1981 to March of 1983, and from May of 1983 to September of 1986. It is also noted that the applicant listed on his 2006 Form I-687 dated October of 1991 that he resided at [REDACTED] [REDACTED] New York, New York, from September of 1981 to December of 1985. These inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his 2006 Form I-687 application and his 1991 Form I-687, doubt is cast on assertions made in it.
- A letter from [REDACTED] in which he stated that the applicant lived with him in his apartment at [REDACTED], Astoria, New York, from June of 1984 to August of 1987, and that they shared the rent and utilities during this period. This information is inconsistent with the information provided by the applicant on his Form I-687 application, part #30 where he listed his address as [REDACTED], Elmhurst, New York, from October of 1981 to March of 1983, and from May of 1983 to September of 1986; and [REDACTED] Sunnyside, New York, from September of 1986 to June of 1989. It is also noted that the applicant listed on his Form I-687 dated October of 1991 that he resided at [REDACTED], New York, New York, from January of 1986 to August of 1990. These inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his 2006 Form I-687 application and his 1991 Form I-687, doubt is cast on assertions made in it.
- A letter from [REDACTED] sales manager of Lucky Aviation, Motijjheel, Dhaka, Bangladesh in which he stated that the applicant purchased an air ticket from the agency on March 7, 1985 for Dhaka to JFK New York International Airport, and that the flight was scheduled on March 29, 1985. This information is inconsistent with the information provided by the applicant on his 2006 Form I-687 application, part #32 where he listed his absence from the United States from March of 1983 to May of 1983. This inconsistency calls into question the declarant's ability to confirm that the applicant

resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in it.

The record of proceeding contains the following documentation submitted by the applicant in support of his Form I-687 application dated January 3, 2006 and his Form I-485, Application to Adjust Status, filed on August 17, 2001:

- An affidavit dated July 3, 2001 from [REDACTED] in which he stated that the applicant is a friend of his brother, that he knew him in Bangladesh, and that to the best of his recollection, the applicant came to New York sometime in 1981. He also stated that they maintained a relationship, that the applicant would occasionally visit him, or that they would attend various social events. The affiant further stated that he and the applicant would maintain contact with one another on-and-off during the time the applicant was in New York. Here, the affidavit lacks detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated December 27, 2005 from [REDACTED] in which he stated that he met the applicant in Bangladesh in 1976, through his brother. The affiant further stated that the applicant arrived in the United States and lived with him at [REDACTED] Elmhurst, New York from October 27, 1981 to September of 1986. He also stated that he was personally knowledgeable of the applicant's presence in the country during the requisite period and his being absent from the United States from March 22, 1983 to May 7, 1983. Here, the two affidavits submitted by the affiant are very dissimilar in nature. In the affidavit dated July of 2001, the affiant did not indicate that he was certain of the applicant's arrival in the United States or that the applicant resided with him for a number of years. As a matter of fact, the affiant clearly indicated in his July of 2001 affidavit that the applicant would occasionally visit with him on-and-off, and that they would attend various social events. **It is also noted that the applicant listed his address on his Form I-687 dated October of 1991 as [REDACTED] New York, New York, from September of 1981 to December of 1985; and [REDACTED] New York, New York, from January of 1986 to August of 1990.** This information is inconsistent with the information provided by the applicant on his Form I-687 dated October of 1991. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his 1991 Form I-687, doubt is cast on assertions made in it.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since November of 1983 when they met at a religious gathering of Bangladesh: Muslims in New York City. He also stated that they became friends, maintained a relationship, and often came across each other at social gatherings, including home visits.

This information is inconsistent with the information provided by the applicant on his 2006 Form I-687 application, part #31 where he did not list any affiliations or associations with any churches, clubs, or organizations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. It is further noted that the affiant has not provided evidence that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's residence in this country since 1983, he failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982 and throughout the requisite period. Because the affidavit conflicts with a statement made by the applicant, and is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the Notice of Intent to Deny (NOID) issued to the applicant on July 13, 2006, the director noted that the affidavits submitted by the applicant were not credible and were not corroborated by any independent documentary evidence. The director also noted discrepancies in the applicant's statements made during his interview with an immigration officer on March 23, 2006 regarding the duration of his education in Bangladesh and the date he first entered the United States that called into question the veracity of his testimony.

In response to the NOID the applicant stated that based upon his illegal status he either did not possess or did not retain documentation to support his statement that he arrived in the United States in October of 1981. He further stated that the affidavits submitted are sufficient as evidence of his residence in the country during the requisite period, and that the affiants should not be expected to retain evidence relating to their relationship with him over the years. The applicant also stated that he was promoted two grade levels in Bangladesh, which allowed him to receive a certificate of completion in May of 1981 rather than 1983. The applicant did not submit any documentation to substantiate his claims.

In denying the application the director noted that the evidence submitted by the applicant was insufficient to overcome the grounds for denial described in the NOID, and that the applicant had failed to submit documentation to support his claim of completing his schooling in Bangladesh in 1981 rather than 1983.

On appeal, the applicant asserts that the director failed to give due weight to the evidence he submitted, that he submitted affidavits that met the criteria for attestations, and that he effectively rebutted the discrepancies in his statements. The applicant submitted as evidence copies of an Interview Notice (G-56), Notice of Intent to Deny, Response to Notice of Intent to Deny, and Notice of Decision dated August 21, 2006.

Contrary to the applicant's claim, he has not provided sufficient, probative evidence of residence in the United States relating to the requisite period. It is further noted that the applicant has submitted attestations that are in direct conflict with each other, and that gravely contradict statements made by the applicant in his Form I-687 applications. The applicant has also failed to submit independent

documentary evidence to substantiate his claim that he completed his schooling in Bangladesh in 1981. It is noted that the evidence submitted by the applicant on appeal is irrelevant to his claim of continuous unlawful residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed 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 applicant's unresolved inconsistencies in the record, the contradictory statements on his applications and his 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 for the requisite period 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.