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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]

FILE: [redacted] Office: NEW YORK Date: APR 23 2008

MSC-05-316-11269

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 Records 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[1] 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.

The applicant appealed the director's decision on October 18, 2006.

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 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. 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 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

[1] The applicant was born in Dhaka, Bangladesh on February 2, 1962.

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 August 12, 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 his first address in the United States to be at [redacted] Brooklyn, New York from October 1981 to December 1987. Similarly, at part #33, he showed his first employment in the United States to be for [redacted] Brooklyn, New York as a construction helper from November 1981 to December 1987.

The applicant submitted a copy of pages from his Bangladesh passport and the following relevant documentation:

- A notarized declaration from [redacted] of Brooklyn, New York, made July 11, 2005, stating that the applicant arrived in the United States by ship in October 1981 without inspection and that he has known the applicant for 25 years in the United States. Mr. [redacted] stated that he helped the applicant to submit a legalization application "some times in between 1987 & 1988." Attached to the declaration is the declarant's driver's license issued December 13, 2004.

- An un-notarized, undated "CSS/LULAC Legalization and Life Act Adjustment Form" from [redacted] who stated that he first met the applicant in 1981 in Brooklyn, New York at his

friend's house. He stated that the applicant told him he entered the United States by ship at Miami, Florida.

has provided two statements summarized above that do not demonstrate personal knowledge of the applicant's residence in the United States during the requisite period, and there is no evidence that [redacted] was in the United States during the requisite time period. The statements provides no details about the affiant's relationship with the applicant or how he knows that the applicant arrived in the United States 24 years ago without inspection. Reasonably the applicant would have not wanted the fact known that he was in the United States illegally.

- An affidavit made on October 7, 2005, was submitted by [redacted] of Brooklyn, New York, who stated that he personally knows that the applicant entered the United States without inspection in 1981 and that he first met the applicant in 1981.

The form of the above mentioned affidavit is a "fill-in-the blanks" form in which the affiant inserted his name and address, inserted two dates of years and signed the form. [redacted] does not demonstrate personal knowledge of the applicant's residence in the United States during the requisite period and in fact stated the applicant's former residential address in Bangelesh in the affidavit. The statements provide no details about the affiant's relationship with the applicant or how he knows that the applicant arrived in the United States 24 years ago without inspection.

- A notarized declaration from [redacted] of Teaneck, New York made June 3, 2004, stating that he has known the applicant since 1981 when the applicant entered the United States without a visa.

According to [redacted]s statement in his affidavit the applicant worked for him in 192 and in 1987 although, by his statement, he knew that the applicant was in the United States illegally. There is no explanation why [redacted] would have employed the applicant illegally. Other than to state that the Applicant "is known" to me, the affiant does not demonstrate personal knowledge of the applicant's residence in the United States during the requisite period and provides no details about the affiant's relationship with the applicant or how he knows that the applicant arrived in the United States 23years ago without a visa. The affiant provides no verifiable information concerning the above nor does he provide specific information concerning the applicant.

- A notarized declaration from [redacted] of New York, New York, made July 8, 2004, stating that the applicant is his neighbor and that he entered the "United States before January 01, 1982, and has been residing continuously in an unlawful manner till today."

The above affiant has stated day, month and year when the affiant arrived in the United States, and when the applicant took a trip to Canada. There is no information presented in the affidavit how the affiant received this information, and reasonably the applicant would have not wanted the fact known that he was in the United States illegally. Although the affiant stated in the affidavit that he knows the applicant was continuously physically present in the United States, the applicant's

neighbor does no give specifics concerning how he received this information. According to the Form I-687, the applicant lived in five different residences and while the address given for the applicant is in one postal zip code area, Elmhurst, New York, the affiant stated he resides in another different zip code area.

- A notarized declaration from [redacted] of Brooklyn, New York, made June 13, 2004, stating that he had known the applicant since 1981, that he worked with the applicant on construction jobs at times from 1981 to 1995. [redacted] stated that he and the applicant used to "offer our prayers in the same Mosque since 1981."

The affiant has failed to provide specific details that are verifiable such as their common employers, their respective duties and the construction locations where he stated he worked with the applicant. The affiant failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

- A notarized declaration from [redacted] of Brooklyn, New York, made May 8, 2004, stating that the applicant is his relative and that the applicant entered the United States before January 1, 1982.

As the affiant stated that he is a relative of the applicant, his statements have less weight in this matter since he cannot be viewed as a disinterested affiant as the applicant's relation. [redacted]'s statement is devoid of details that are verifiable. The affiant failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He has not provided evidence of his own physical presence in the United States during the requisite period. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

- A notarized declaration from [redacted] of New York, stating that the applicant is known to her since 1981.

The affiant's brief statement provides no specific details of the applicant's presence in the United States 22 years before. Her statement is devoid of details that are verifiable. The affiant failed to state that she has direct, personal knowledge of the applicant's continuous residence in the United States. She has not provided evidence of her own physical presence in the United States during the requisite period. She does not indicate where or under what circumstances she met the applicant, the addresses at which the applicant lived during the requisite period, her frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

A notarized declaration dated May 5, 2003, from [redacted] of Brooklyn, New York, stating that the applicant "was working with us from the date of 1st November 1981 to December, 05, 1987 as a construction worker."

Concerning employment records, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states:

> (i) Past employment records, which may consist of pay stubs, W - 2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:
>
> (A) Alien's address at the time of employment;
>
> (B) Exact period of employment;
>
> (C) Periods of layoff;
>
> (D) Duties with the company;
>
> (E) Whether or not the information was taken from official company records; and
>
> (F) Where records are located and whether the Service may have access to the records.
>
> If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

declaration and affidavit does not comply with these regulatory requirements and is insufficient to provide independent objective evidence of the applicant's employment.

The applicant also submitted:

An "Affidavit of Residence" made on May 6, 2003 by [redacted] of Brooklyn, New York, stating that the applicant was residing at [redacted] Brooklyn, New York

from October 10, 1981 to December 31, 1987. According to [redacted] he is the apartment lease owner and the applicant "was sharing with me gas bill, electrical bill, telephone bill and house rent by the cash payment."

According to the above affiant, he and the applicant shared an apartment and the affiant rented to the applicant. Other than the statement, no specifics were provided in the statement concerning the payment of the utility bills during that period mentioned by the affiant and the applicant's contribution. . Although the affiant stated he was the lesser and roommate of the applicant, his statement is devoid of details that are verifiable. The affiant failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He has not provided evidence of his own physical presence in the United States during the requisite period such as the apartment lease. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

- An "Affidavit of Witness" made on July 9, 1991, by of Brooklyn, New York, who stated that the applicant is her friend and to her personal knowledge the applicant resided at [redacted] Brooklyn, New York from October 1981 to December 1987 and another location through the date of her affidavit.

According to the affiant she is a friend of the applicant and knows to her personal knowledge that the applicant resided at two addresses during the requisite period. The affiant failed to state that she has direct, personal knowledge of the applicant's continuous residence in the United States. She has not provided evidence of her own physical presence in the United States during the requisite period. She does not indicate where or under what circumstances she met the applicant and frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's presence here.[2]

- An affidavit from [redacted] of Brooklyn, New York made December 10, 1990, stating that he has been a resident of the United States since 1974 and has known the applicant since 1981.

The affiant utilized a form affidavit in which the year 1981 is pre-printed and merely provided his own address and information concerning the specific day, month and year of the applicant's visit to Canada in 1987. The affiant failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He has not provided evidence of his own physical presence in the United States during the requisite period such as the apartment lease. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

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[2] The applicant has submitted a second standard form affidavit that appears similar to the affidavit from [redacted] but it is obscured and illegible.

The director determined that the applicant had not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) issued March 3, 2006. Specifically, the director found that the applicant had submitted no documentation, except for affidavits, to prove his entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date. The director determined that the affidavits submitted were neither credible nor amenable to verification.

The applicant responded to the NOID on May 25, 2006. The applicant stated that the affidavits submitted were credible and amenable to verification. Further the applicant submitted the following evidence:

A form affidavit from of Brooklyn, New York, made May 23, 2006, stating that he has been in the United States since 1975 and that he has known the applicant "since Nov. 1981 (1981) or (1986 to 1988)" and that the applicant was "continuously present in the United States of America from 1/1/1982 till 5/4/1988."

- A form affidavit from [redacted] of Brooklyn, New York, made May 24, 2006, stating that he has been in the United States since 1975 and that he has known the applicant "since Nov. 1981 (1981) or (1986 to 1988)," and that the applicant was "continuously present in the United States of America from 1/1/1982 till 5/4/1988."

A form affidavit from [redacted] of Brooklyn, New York, made May 19, 2006, stating that he has been in the United States since 1980 and that he has known the applicant "since Nov. 1981 (1981) or (1986 to 1988)," and that the applicant was "continuously present in the United States of America from 1/1/1982 till 5/4/1988."

As may be seen all three of the above affidavit are forms in which the affiants attested to pre-printed information. Each of the above affiants failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He has not provided evidence of his own physical presence in the United States during the requisite period. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

The director denied the application for temporary residence on September 22, 2006. In denying the application, the director found that the additional affidavits submitted in response to the director's NOID and the evidence submitted to support the applicant's Form I-687 application was neither relevant, probative nor credible evidence that the applicant was in the United States during the requisite period.

Specifically, the director stated that the affidavits of [redacted] (who stated he has been in the United States since 1975) and [redacted] (who stated he has been in the United States since 1975) were not credible since according to CIS records [redacted]

entered the United States on March 26, 1986, and [redacted] entered the United States on November 21, 1996.

On appeal, the applicant asserts that he has difficulty presenting documents to show that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant states that because he has been a paying residential boarder he has no utility bill receipts, that he was a member of the Bangladesh Society Inc., New York but he does not have any membership fee receipts, did not have a Social Security number (or therefore Social Security records)[3] and does not have hospital records.

Further, the applicant states he is submitting additional affidavits to prove his residency.

The applicant has stated in part #31 of Form I-687 that he was a member of the Bangladesh Society Inc. New York, from 1983 to present. The applicant has also submitted two statements on letterhead from that organization.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that:

Attestations by . . . organizations to the applicant's residence by letter [are permitted] which:

(A) Identifies applicant by name;

(B) Is signed by an official (whose title is shown);

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during membership period;

(E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

The statement dated August 1, 2005, stated that "he [the applicant] is an active member of Bangladesh Society Inc. New York since 1983." The second statement from the same organization found in the record dated October 10, 2006, stated that "he [the applicant] is a regular member of the society since 1981." There is no explanation provided to explain the inconsistency between these two statements from the same organization. It is incumbent upon the applicant to resolve any inconsistencies in the

[3] The applicant has submitted his Social Security card "valid for work only with DHS authorization" in the record of proceeding.

record by independent objective evidence. Based upon the applicant's statement in part #31 of Form I-687 that he was a member of the Bangladesh Society Inc. New York, from 1983 to present, the August 1, 2003 letter would appear to be correct, and the October 10, 2006 letter incorrect concerning the applicant's commencement of membership. However, any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The applicant has submitted a letter statement from [redacted], M.D., of Brooklyn, New York, stating that this physician saw the applicant for a "gigh [sic] fever on February 2, 1982" and on six specific dates between August 26, 1982 to October 5, 1987. In certain instances, the regulation at 8 C.F.R. § 245a.2(d)(3)(i)(F)(iv) states "hospital or medical records showing treatment or hospitalization of the applicant . . . [that] show the name of the medical facility or physician and the date(s) of the treatment or hospitalization" may be submitted to prove continuous residence in the United States. However, the New York State Education Department, Office of the professions web site (i.e. http://www.nysed.gov) accessed September 21, 2006 states [redacted]s licensing information. According to that informational site, the physician received his license to practice medicine in the State of New York on July 29, 1985 not in 1982, and reasonably he would not be practicing medicine in New York prior to receiving his professional licensing.

The applicant has submitted a receipt for a furniture purchase dated August 1, 1982. The director found that the company noted on the receipt, A & A Brooklyn Bedding Corp., of Brooklyn, New York, is registered business entity in the State of New York as of April 22, 1991, nine years after the date of the above receipt. See http://appsext8.dos.state.ny.state.us accessed April 5, 2008. There is no credible and probative evidence that the company was in existence and in business in 1982.

The applicant has submitted two envelopes addressed to the applicant at [redacted] Brooklyn, New York, both with obscured and illegible postage cancellation dates. On the photocopies are typed dates in 1987 that cannot be correlated by postage stamp markings on the copies.

The applicant submitted standard form affidavits from [redacted] of the Bronx, New York made October 14, 2006, from [redacted] of Brooklyn, New York made October 7, 2006, from [redacted] of Ozone Park, New York, made October 19, 2006, and [redacted] of the Brooklyn, New York made October 3, 2006. In the four affidavits paragraphs 4, 5, 6 and 7 contain exactly the same information. Each affiant reputedly knew the day, month and year of the applicant's date of birth, when the applicant was continuously present in the United States, when the applicant traveled to Canada, and when the applicant was present during the requisite period two decades before the making of the affidavits. Each of the above affiants failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. He has not provided evidence of his own physical presence in the United States during the requisite period. He does not indicate where or under what circumstances he met the applicant, the addresses at which the

applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

In summary, the applicant has provided insufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. The statements and affidavits submitted lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and 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.