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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: DEC 1 5 2008

consolidated herein]
MSC 05 202 16584

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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. 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.

John F. Grissom, Acting 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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing under section 245A of the Immigration and Nationality Act (Act) during the original one-year application period that ended on May 4, 1988.

An applicant for temporary resident status must establish his or her 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. *See* 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. *See s*ection 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. *See* 8 C.F.R. § 245a.2(b)(1).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.2(h)(1)(i), as follows: "[A]n applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed."

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; 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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Bangladesh who claims to have lived in the United States since 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on April 20, 2005.

On February 6, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant's testimony at his legalization interview on October 26, 2005, and documentation in the record regarding his marriage, the birthdates of his children, and

the number of his departures from the United States. The director also indicated that the affidavits in the record lacked sufficient probative value and credibility to establish the applicant's continuous residence in the United States during the requisite period for legalization under section 245A of the Act.

The applicant responded by offering some explanations and additional documentation to address the evidentiary inconsistencies cited in the NOID, and also submitted some new affidavits as evidence of his continuous residence in the United States.

On June 5, 2007, the director issued a Notice of Decision denying the application. The director declared that the information and documentation submitted in response to the NOID lacked sufficient substance and credibility to overcome the grounds for denial.

On appeal counsel asserts that the evidence submitted by the applicant is sufficient to demonstrate his continuous residence in the United States during the years 1981 to 1988. In counsel's view, there are no inconsistencies between the applicant's interview testimony and the documentation of record, and the affidavit evidence is credible. According to counsel, therefore, the applicant meets the requirements for legalization under section 245A.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On the Form I-687 he filed in April 2005 the applicant indicated that he had resided continuously in the United States since August 1981, that he had departed the country only once during the 1980s to visit his wife in Bangladesh from September 14 to October 21, 1983, and that he returned to the United States with a B-2 visa (valid for six months) which he procured in Bangladesh on October 9, 1983. On the Form I-687 the applicant listed two addresses in the United States during the 1980s, both in Brooklyn, New York. They included (1) 3401 J Avenue from August 1981 to April 1987; and (2) 666 Dean Street from May 1987 to October 1990. This information is consistent with that provided on an earlier Form I-687 filed by the applicant (along with an affidavit for determination of class membership in the LULAC class action lawsuit) at the Miami Legalization Office in August 1991.

On another Form I-687 (and affidavit for determination of class membership in LULAC) prepared several months earlier in March 1991, however, the applicant indicated that his date of initial entry into the United States was December 1, 1981, that his only departure from the country during the 1980s was a trip to Bangladesh to visit his wife from November 11 to December 13, 1983, and that he returned to the United States with a B-2 visa (valid for two months) which he procured in Bangladesh on November 15, 1983. Thus, both the initial date of

entry into the United States in 1981 and the dates of the trip to Bangladesh in 1983 were different in the first Form I-687 and LULAC affidavit prepared by the applicant.

Furthermore, on two different Forms G-325A (Biographic Information) filed by the applicant in subsequent years, different information was provided about the applicant's country of residence in the early 1980s. On the first Form G-325A, dated July 10, 1998, the applicant stated that his last address outside the United States for more than one year was in Shamoli, Dhaka, Bangladesh, from March 1980 to October 1983. The applicant provided exactly the same information on the second G-325A, dated December 6, 2001. On both of these forms, therefore, the applicant did not claim to have lived in the United States before October 1983.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. The AAO determines that he has not.

The applicant has submitted seven air mail envelopes addressed to him in Brooklyn from individuals in Bangladesh with postmark dates during the requisite period for legalization under section 245A. The postmark dates are October 12, 1981; February 13, 1982; October 4, 1983; January 24, 1984; November 13, 1985; July 24, 1986; and June 23, 1987. The envelopes do not appear to be authentic, however, because none of them bears a U.S. Postal Service mark, some of them do not have complete return addresses in Bangladesh, and one of them – with a Bangladeshi postmark date of July 24, 1986 – is addressed to the applicant at 666 Dean Street, a residence he claims on all of his Form I-687 applications to have occupied from May 1987 to September/October 1990. The applicant has not explained why that envelope would be sent to an address in Brooklyn ten months before he moved in. For the reasons discussed above, the AAO concludes that the air mail envelopes are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

The record includes an airline ticket receipt issued to the applicant by Bengal Travel Service in New York City on November 21, 1983, for travel from Dhaka via London to New York on December 12-13, 1983. This document may be consistent with the applicant's claim on his first Form I-687 in 1991 to have made a trip to Bangladesh in November and December 1983, but it does not identify any address for the applicant and does not show that the applicant was a resident of the United States at that time. The record also includes a letter from Bengal Travel Service, dated May 18, 1991, "confirm[ing]" that the applicant bought a one-way airline ticket from New York via London to Dhaka, departing on September 14, 1983. This document is

consistent with the applicant's claim on his current Form I-687, and his second Form I-687 in 1991, to have made a trip to Bangladesh in September and October 1983. Like the airline ticket discussed above, however, the letter from the travel bureau does not identify any address for the applicant in the United States in 1983 and does not show that he resided in the country at that time. [1] Thus, the foregoing documents are not persuasive evidence that the applicant was a continuous resident of the United States during the years 1981 to 1988, as required for legalization under section 245A of the Act.

The only other document in the record with a date from the 1980s is a photocopied receipt of [redacted]s Pharmacy in Corona, New York, dated February 14, 1984, identifying the applicant as the customer and his address as [redacted] (town unidentified). This document also lacks credibility. The address on the receipt is not identified by the applicant anywhere else in the record as one of his residences during the 1980s. In fact, this address contradicts the information provided by the applicant on all of his Forms I-687, in which he consistently listed his address from August 1981 to April 1987 as [redacted] in Brooklyn. Furthermore, the receipt bears no date stamp or any other authenticating mark to verify that it was actually written on February 14, 1984. For the reasons discussed above the pharmacy receipt has little or no probative value.

The record includes letters from two businesses in 1991 – Bengal Travel Service and Par Travels, both in New York City – stating that the applicant was employed at the former company from December 1981 to December 1986, initially as a messenger and as of 1983 as an office assistant, at a pay rate of $2.50 to $3.50/hour, and that he was employed by the latter company from January 1987 to October 1990 as a sales person, at a pay rate of $4.00 to $5.00/hour. These employment letters do not comport with the requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records; and did not indicate the location of such records and whether they were available for review. Nor are the letters accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed during any of the years in question. Due to the infirmities discussed above, the employment letters have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States during the years 1981 to 1988.

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[1] Seen in combination, the travel bureau letter and the airline ticket could indicate that that the applicant made one long trip to Bangladesh lasting three months – from September 14 1983 to December 13, 1983 – rather than two one-month trips as claimed by the applicant. A three-month trip would have exceeded the 45-day maximum for a single absence from the United States, prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration would interrupt an alien's continuous residence in the United States unless he or she could show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), in which the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The record also includes (1) an affidavit from the vice-president of the Islamic Council of America Inc. in New York City, dated August 3, 1991, stating that the applicant was known to him since 1981 and used to come to the mosque for prayers and other religious occasions; (2) a letter from the former imam of the same organization, dated March 26, 2004, stating that he has known the applicant since 1982 and that he saw the applicant attending Friday prayers and Islamic holidays while he was imam from 1982 to 1986; (3) a letter from the imam of the Islamic Circle of North America in Jamaica, New York, dated February 18, 2004, stating that he had known the applicant since 1981, that the applicant was a member, and that he came to the center for prayers and other programs; (4) a letter from the former imam of the [redacted] of [redacted] in Dayton, New Jersey, dated April 6, 2004, stating that the applicant had been associated with the organization since 1985, attended many functions, and performed volunteer work; and (5) an affidavit from the senior vice president of the [redacted] New York, in Elmhurst, New York, dated February 20, 2006, stating that the applicant is involved in the society and, according to the organization's records, was a member from 1982 to 1984.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. Of the affidavits and letters cited above, most did not show the applicant's precise dates of membership in the organizations, none indicated where the applicant lived at any time during his membership period (or the 1980s in general), most were vague about how the authors knew the applicant, and most were unclear about whether their information about the applicant was based on personal knowledge, organizational records, or hearsay. Since the affidavits and letters do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), and three of the authors do not claim to know anything about the applicant before January 1, 1982, the AAO concludes that the documents have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Lastly, the record includes numerous affidavits and notarized statements – dating from 1991 and 2004-06 – from individuals who claim to have known, and in two cases resided with, the applicant during the 1980s. All of these documents have minimalist or fill-in-the-blank formats with limited personal input by the authors. For the amount of time they claim to have known the applicant – in most cases since 1981 – the authors provided remarkably few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him during the 1980s. The affidavits and notarized statements are not accompanied by any documentary evidence of the affiants' own identities, nor any photographs, letters, or other documentation demonstrating the affiants' personal relationship with the applicant in the United States during the 1980s. For the reasons discussed above, the affidavits and notarized statements have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.