U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MIAMI (ORLANDO) Date: JAN 04 2008
MSC-05-071-10123

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:

[redacted]

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 Acting District Director, Miami. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on September 19, 2007, finding that the appeal had been untimely filed. The applicant, through counsel, has now submitted a certified mail receipt proving that the appeal had been timely filed and requesting that the AAO reopen and reconsider its decision.[1] In response, the AAO has sua sponte reopened the decision.[2] The AAO's decision of September 19, 2007 will be withdrawn. 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 December 10, 2004. 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. Specifically, the director found that the applicant had submitted no evidence to establish that he had entered the United States prior to January 1, 1982. 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 submits a statement claiming that he is eligible for temporary resident status and referring to documents that he had submitted previously in support of his application. He also submits, for the first time, evidence other than his own testimony that he entered the United States before January 1, 1982, an affidavit from an acquaintance. He also submits on appeal a second affidavit that refers only to the years 1984 to 1988.

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).

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[1] Counsel also claims that the AAO mistakenly referred to the applicant's "Form I-694" appeal, as the applicant actually filed on Form I-290 per erroneous instructions provided in the director's decision. The correct form is Form I-694, and the AAO referred to the appeal as such, with no prejudice to the applicant. The AAO has accepted the Form I-290 as a properly filed appeal in this case.

[2] Motions to reopen or reconsider a decision on an application for temporary residence are not considered. 8 C.F.R. § 245a.2(q). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

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 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). 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.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period. In this case, the applicant has provided the following evidence relating to the requisite entry and residence:

- Two affidavits from acquaintances, [redacted], residing in Brooklyn, New York, on forms dated May 16, 2006. Mr. [redacted] claims to have known that the applicant resided in the United States at [redacted], Jamaica, New York, from November 1981 to March 1984 and can date

the beginning of his acquaintance with the applicant in the United States from "social gathering, religious institute, market place etc." On an identical form, Mr. [redacted] claims to have known that the applicant resided in the United States at [redacted], New York, from April 1984 to February 1988 and can date the beginning of his acquaintance with the applicant in the United States from "religious place, social gathering festival and market place." Both the addresses and dates of residence listed for the applicant are consistent with information provided by the applicant on his Form I-687 application. However, the affidavits are prepared on fill-in-the-blank forms and lack details regarding the affiants' claimed relationship with the applicant. The affiants fail to indicate any personal knowledge of the applicant's entry to the United States or of the circumstances of his residence other than his address. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.

- A letter on letterhead of the [redacted], dated December 15, 1990, signed by someone "For Islamic Council of America, Inc." with an illegible signature. The letter certifies that the applicant has been associated with "this Muslims religious organization" from March 1982 until December 1990, and that he "[a]ttended at the Mosque for the purpose of prayers, he also rendered volunteer service . . . ." The letter is not notarized and appears to be a form letter with the applicant's name inserted. While consistent with the applicant's description of his affiliations or associations on his Form I-687, the letter fails to conform to regulatory guidelines in that it does not indicate that it is signed by an official, state the address where the applicant resided during the membership period, establish how the author knows the applicant, or state the origin of the information provided. *See* 8 C.F.R. § 245a.2(d)((3)(v).

- A letter on letterhead of the Bangladesh Society Inc., dated December 15, 1990, signed by the General Secretary. The letter, which also appears to be a form letter with the applicant's name inserted, uses almost identical language as the letter described above. It certifies that the applicant has been associated with "this Social cultural organization since April 1982 until 12/1990" and that he "used to attend [ ] the Club for the purpose of social activities, he also rendered his volunteer service . . . ." Similar to the letter described above, it is not notarized and, although consistent with the applicant's description of his affiliations or associations on his Form I-687, the letter does not conform to regulatory guidelines in that it fails to state the address where the applicant resided during the membership period, establish how the author knows the applicant, or state the origin of the information provided.

- Two rental agreements, the first, dated June 12, 1983, for a term commencing on July 1, 1983 and ending on May 30, 1986 at [redacted] in Jamaica, New York; and the second, undated, for a term commencing on June 1, 1986 and ending on May 30, 1988 at [redacted] Brooklyn, New York. The addresses and dates of residence in the rental agreements contradict information provided by the applicant on his Form I-687 application, in which he claims to have resided in Jamaica, New York, from October 1981 until June 1990, when he claims to have moved to [redacted] in Brooklyn. He lists his Jamaica residences as [redacted] from October 1981 to March 1984, [redacted] from April 1984 to February 1988, and [redacted] from March

1988 to May 1990. These inconsistencies between the applicant's statements and the rental agreements diminish the credibility of the applicant's claims to have resided in the United States at the times and places he indicated.

- Two drug prescription forms for the applicant from Dr. [redacted] at a Brooklyn address, dated September 11, 1986 and October 11, 1987 respectively. Both forms show the applicant's address as [redacted] in Brooklyn. As noted above, the applicant claimed to have resided at that address beginning in 1990.

- A receipt written out to the applicant from "AOP New & Used Furnitures" in Brooklyn. The applicant claims the receipt is dated "in the year 1986 and 1987," but the date is illegible; it notes a Jamaica address for the applicant. While one receipt indicates presence in the United States on the date issued, it has minimal weight as evidence of residence and, as the date is not legible on this receipt, it has no relevance in this case to the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. The one affidavit in the record that attests to entry into the United States before January 1, 1982 is bereft of sufficient detail to be found credible or probative; the other affidavit and letters lack probative value and credibility for the reasons noted; and additional documents submitted either lack relevance or provide inconsistent and contradictory information regarding dates and places of residence.

The remaining evidence in the record is comprised of the Form I-687 application and the applicant's statements, in which he claims to have entered the United States in November 1981 and resided in the United States for the requisite period. However, his assertions are not supported by any credible evidence in the record, and the places and dates of residence he provided on his Form I-687 application are actually contradicted by documents he has submitted. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that 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.