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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 24 2008

MSC 05 235 14092

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. 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.

for 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, and 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 listed the names of the individuals whose attestations were submitted in support of the applicant's claim and concluded that the written statements lacked probative value. Accordingly, 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, counsel for the applicant disputes the denial, noting that the director improperly made an adverse finding on the basis that the applicant failed to learn English during his alleged 30-year residence in the United States. Counsel also states that he intends to submit a brief in support of this appeal. However, upon the AAO's initial review of the applicant's record of proceeding, an appellate brief was not found. Accordingly, the AAO attempted to contact counsel in an effort to determine whether a brief had, in fact, been submitted. Counsel was contacted by telephone on May 29, 2008 at the phone number provided in his Form G-28, Notice of Entry of Appearance as Attorney or Representative. A telephone message was left for counsel, instructing him to contact the AAO at the phone number provided. However, counsel failed to respond. On June 12, 2008, a request for the additional evidence and/or brief was sent by fax to counsel. On June 17, 2008, counsel responded, stating that the brief and evidence was already submitted with the appeal. As such, the AAO will consider the record complete as presently constituted and a decision will be made on the basis of the documentation currently on record.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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).

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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible, probative evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet that burden. The record shows that in support of the application, the applicant provided his own sworn statement dated May 16, 2005 in which he stated that he first entered the United States as a crewman on June 15, 1976 and departed for a brief visit with family in Bangladesh from May to July 1987. The applicant also provided a copy of his crewman's landing permit showing arrival dates of August 29, 1975, February 8, 1976, and June 15, 1976. The applicant also provided the following third party statements regarding his residence in the United States during the statutory period:

1. Affidavits dated March 1, 2006 from [redacted] and [redacted] respectively, and two affidavits dated March 2, 2006 from [redacted] It is noted that submitted two separate affidavits, both dated March 1, 2006. The first three affiants all claimed to have known the applicant since 1976, while [redacted] and [redacted] both claimed to have known the applicant since 1981. In his second affidavit, Mr. [redacted] stated that the applicant resided with him from June 1976 to October 1984 at 631

[redacted] Brooklyn, New York. Similarly, in his second affidavit, [redacted] claimed that the applicant resided with him from November 1984 to December 1990 at 353 [redacted] Brooklyn, New York. Both [redacted] and [redacted] further stated that all rent receipts and household bills were in their respective names, not in the name of the applicant. However, no documentation was provided to support these claims. Additionally, while all five affiants claimed that the applicant resided in the United States during the statutory period and further stated that the applicant's legalization application was denied because the applicant traveled abroad between May 1987 and May 1988, none of the affiants provided the specific circumstances explaining how each one met the applicant, nor did anyone provide any specific information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, these seven affidavits will only be afforded minimal evidentiary weight.

2. Two photocopied affidavits dated May 8, 2004 and July 8, 2004 from [redacted] and [redacted], respectively. stated that he had known the applicant since December 1976 and claimed that the applicant entered the United States with his parents. However, the record shows that the applicant was an adult at the time of his entry into the United States in 1976 as a crewman and that he has not claimed that he entered the country with his parents. In fact, the applicant claimed that his only departure from the United States was to visit his ill father, who had been residing in Bangladesh, not in the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. 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). Mr. [redacted]s statement also lacks probative value, as the only information provided by this affiant about the applicant is the applicant's current residential address. While [redacted] claimed to have known the applicant since July 1981 and purportedly knew about the applicant's failed attempts at filing the legalization application, the affiant failed to specify how he met the applicant and provided no information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. Thus, based on their lack of probative value, these affidavits will only be afforded minimal evidentiary weight.

3. An affidavit dated March 2, 2006 from who claimed to have known the applicant since 1978. The affiant stated that he and the applicant are from the same country and claimed that he has met the applicant "at the local mosque," the name of which was not provided. It is noted that the applicant did not claim any affiliations with any religious institutions in No. 31 of the Form I-687, where this information was requested. As a result of this discrepancy between the Form I-687 and the affiant's statement, the credibility of this affidavit comes into question. Moreover, the affiant failed to provide any specific information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. Therefore, this affidavit will be afforded only minimal weight.

4. An affidavit dated March 22, 2005 from [redacted], who stated that he had known [redacted] since 1976 because he was a neighbor and close friend. It is noted that the applicant did not claim to have used any aliases. Therefore, it is unclear whether the name referenced by this affiant is that of the applicant. Aside from this anomaly, this affidavit lacks probative value, as the affiant failed to provide the address where he and the applicant purportedly resided as neighbors and he provided no details regarding the events and/or circumstances of the applicant's residence in the United States during the statutory period, other than stating that the applicant's legalization application was not accepted for filing as a result of his alleged travel abroad.

5. An affidavit dated April 20, 2005 from [redacted], who claimed that he had known the applicant since November 1976. The affiant provided a list of the applicant's residences in the United States, identical to the order in which these same residences were listed in the applicant's Form I-687, and claimed that he first became acquainted with the applicant at a [redacted]. However, as previously stated, the applicant did claim any affiliations with religious organizations in No. 31 of his Form I-687. Therefore, the reliability of the information provided by this affiant is questionable. The only other information provided by the affiant is the date of the applicant's departure from and return to the United States. The affiant did not describe any specific events or provide any information about the circumstances of the applicant's residence in the United States during the statutory period. Accordingly, due to these deficiencies, this affidavit will be afforded minimal evidentiary weight in this proceeding.

6. An affidavit date stamped March 2, 1981 from [redacted] who stated that she met the applicant at a seminar in Queens, New York and had known him since November 1976. While the affiant claimed that the applicant entered the United States prior to January 1, 1982, it is unclear how she would have known the commencement date of the statutory period in 1981 when the affidavit was purportedly written. It is also unclear how the affiant can attest to the applicant's continuous residence and brief absence if the affidavit was written prior to the commencement of the statutory period. Additionally, the affiant indicated that her passport was issued on May 19, 1993, thereby suggesting that the affidavit predates the passport issuance by 12 years. Further, the photocopied notary stamp affixed to the bottom of the affidavit shows that the notary's commission was to have expired in 1988, which also would have predated the passport issue date cited in the heading of the affidavit. In light of these tremendous anomalies, the AAO concludes that this document is invalid and, therefore, void of any probative value. As such it will not be considered in this proceeding. Furthermore, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

7. A photocopied affidavit dated January 7, 1988 from [redacted] of E. Hoque General Constructing Corp., stating that he had known the applicant since 1976. [redacted]

claimed that the applicant worked for his company on a part-time basis from August 1976 to October 1978 at a rate of $6.00 per hour. It is noted, however, that the applicant claimed that his only employment in the United States since August 1976 was as a door-to-door laborer. The affiant claimed that he was self-employed and did not specifically name any employers. As such, this affiant's claim is inconsistent with the employment information provided by the applicant in No. 33 of his Form I-687. *See id.* Furthermore, this affiant attested to employment that purportedly took place prior to the commencement of the statutory time period. As such, this statement has no probative value in establishing the applicant's continuous residence during the eligibility period and will be afforded no evidentiary weight in this proceeding.

8. An employment affidavit dated May 2, 1991 from [redacted], manager of Jahan Contracting, stating that the applicant was employed at this establishment from December 1982 to November 1984. Again, the applicant did not include this company in No. 33 of his Form I-687, which asks for a list of the applicant's employers in the United States. *See id.* As such, this affidavit is inconsistent with information provided by the applicant and will be afforded minimal evidentiary weight.

9. An affidavit dated November 12, 1990 from [redacted] who claimed that the applicant used to visit him "now and then" and stated that he had known the applicant since 1976. Although the affiant claimed that the applicant used to work for him, he failed to follow the regulatory guidelines specified in 8 C.F.R. § 245a.2(d)(3)(i), which requires that employers provide the alien's address at the time of employment, the exact period of employment, duties with the company, whether or not the information was taken from official company records, where such records are located, and whether Citizenship and Immigration Services may have access to them. Additionally, this employment was not listed by the applicant in No. 33 of his Form I-687. Accordingly, this affidavit has no probative value and will be afforded no weight as evidence of the applicant's residence in the United States during the statutory time period.

On March 24, 2006, the director issued a notice of intent to deny (NOID), noting that the affidavits submitted in support of the applicant's alleged residence during the statutory period lacked probative value and were therefore insufficient to corroborate his claim.

In response to the NOID, the applicant provided a self-sworn statement dated April 18, 2006 in which he explained why he was unable to provide further evidence to corroborate his claim. The applicant reiterated his claim that he continuously resided in the United States prior to and during the entire statutory period with the exception of a brief absence. The applicant also submitted three additional affidavits dated April 20, 2006 from [redacted] and [redacted] respectively. However, all three affidavits lack probative value.

The first two affiants provided statements nearly identical in their content to the statements of [redacted] and [redacted] in that both affiants claimed to have known the applicant since 1981, attested to the

applicant's residence in the United States during the statutory period, and stated that the applicant's legalization application was denied on the basis of his trip abroad. Again, neither affiant provided any information about specific events and/or circumstances of the applicant's residence during the time period he claimed to have been acquainted with the applicant. Therefore, neither affiant provided information that would lend credibility to his alleged 25-year relationship with the applicant. The affidavit of Dr. [redacted] contains even less information in that this affiant provided only the applicant's current address in the United States and claimed that the applicant is a hard worker. He provided no statements indicating that he knew of the applicant or of the applicant's residence in the United States during the statutory period. The affiant also failed to provide a basis for his assertion that the applicant is a hard worker. The affiant did not state the date or circumstances of his first encounter with the applicant. Therefore, for the reasons stated above these affidavits will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

Accordingly, in a decision dated September 23, 2006, the director denied the application concluding that the applicant failed to provide sufficient evidence to corroborate the claim that he had continuously resided in the United States during the entire statutory period. The director observed that it is not credible that the applicant is unable to communicate in English after 31 years in the United States. The director also noted that the applicant had failed to provide the birth certificate for his child born in Bangladesh in 1988.

On appeal, counsel contends that it is not incredible that the applicant has failed to learn English after 31 years, in light of similar experiences among other immigrants in the United States. Counsel attaches to the appeal a copy of the birth certificate of the applicant's son born in 1988. Finally, counsel states his intention to address the director's finding regarding insufficient evidence and indicates that he would submit additional briefing and information within 30 days of the appeal. However, as previously discussed, the record remains void of any further documentation beyond that which was discussed above. In fact, in his latest fax to the AAO, counsel claims that a brief and evidence was already submitted with the appeal form and any indication that further documentation was forthcoming was due to paralegal error. Thus, as stated earlier, the AAO considers the record complete as presently constituted.

The AAO notes that the director erred in making an adverse finding on the basis of the applicant's inability to speak the English language after an alleged prolonged period of residence in the United States. As such, the director's finding in that regard is hereby withdrawn. Nevertheless, the primary basis for the director's adverse conclusion was the applicant's failure to submit sufficient evidence. Based on the above analysis of the deficient documentation that was submitted to support the applicant's claimed residence in the United States during the statutory period, the AAO concludes that the director's decision was duly warranted.

In summary, the applicant's evidence of his claimed residence in the United States during the statutory period consists of deficient attestations lacking in credibility and probative value. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies in the evidence discussed above, seriously detracts from the credibility of this claim. As previously stated, 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). Given the applicant's 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.**