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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 31 2008

MSC-05-190-10322

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. 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 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. Specifically, the director noted inconsistencies between the applicant's testimony and his previously filed I-589 asylum application. 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 lawyer who assisted him with his asylum application inserted his initial date of entry on his application and that he was unaware that his application reflected this information. He submits an affidavit from his mother in support of his assertion that he entered the United States prior to January 1, 1982 and resided in the United States for the duration of the requisite period.

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. 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 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.

A review of the record reveals that the applicant previously filed a Form I-589 Request for Asylum in the United States on July 19, 1993. The applicant included a Form G-325A, Biographic Information Form, with his filing of the Form I-589. On the Form I-589, the applicant specifically stated in Part D that he departed his country of nationality in September 1992 and that he did not travel through or reside in any other country before entering the United States. This form is signed by the applicant and contains his address in Bangladesh, his address in the United States, his birthdate, and other identifying information. He also indicated that he had not previously traveled to the United States. On the Form G-325A that was submitted with the asylum application, the applicant stated that he began residing in the United States in September 1992. This fact seriously impairs the credibility of his claim of residence in the United States from prior to January 1, 1982, as well as the credibility of any documentation submitted in support of that claim.

On appeal, the applicant claims that he did not fill out his asylum application and merely signed the last page at his attorney's instruction. He claims that he entered the United States prior to January 1, 1982 and that the date that is listed on his I-589 application is incorrect.

In support of his application, the applicant submits a letter from his mother, [redacted], dated October 11, 2006. [redacted] indicated that she and her husband came to the United States with their four children via the United States/Mexico border in August of 1981 and that they resided at [redacted] New York until February 1987. She provided a timeline of the family's claimed residency in the United States from August 1981 until November 1991.

While the declarant's letter supports the applicant's claims of residency in the United States beginning in August 1981, it provides few details of the family's residency during the requisite period beyond their address. It is noted that the declarant references various receipts that she indicated were found in her late husband's records. These receipts are dated at various points during the requisite period, however, they do not contain any identifiable names or personal information which would evidence either the applicant's or his family's residency in the United States. As such, they will be given no evidentiary weight.

Additionally, the declarant's letter contradicts the applicant's statements on his Form I-589 asylum application. It also contradicts the Form G-325A which was signed by the applicant, in which he stated that he resided in Dhaka, Bangladesh from birth until September 1992.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit sufficient independent objective evidence that would resolve this inconsistency. He has not produced sufficient credible evidence, apart from his own testimony and that of his mother, that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the requisite period.

The applicant also submitted a form declaration from [redacted] who indicated that he lived in the Bronx, New York. [redacted] indicated that he first met the applicant in August of 1983 at his residence in Sunnyside, New York. He stated that he went to the applicant's home "a few times" between 1983 and 1988 to meet with the applicant's father who was a friend. He also indicated that the applicant's father told him that he brought his family, including the applicant, into the United States via Naco, Arizona in 1981. While [redacted] declaration does provide some evidence of the applicant's residence in the United States between 1983 and 1988, the declarant does not indicate that he has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. Apart from indicating that he saw the applicant "a few times" from 1983 until 1988 the declarant

offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period, nor did he provide any relevant details regarding the applicant's residence in the United States beyond a few visits over a five year period. This declaration will be given nominal weight.

The applicant submitted a form declaration from [redacted] who indicated that he currently resides in Toronto, Canada. He indicated that he has known the applicant since he was born and that he was living in Dhaka, Bangladesh when the applicant came to the United States. [redacted] further indicated that he knew that the applicant had come to the United States because his grandmother told him. He stated that the applicant sent him post cards and personal letters from New York but the declarant did not submit any of these letters with his declaration. Furthermore, he did not indicate any direct, personal knowledge that the applicant entered the United States prior to January 1, 1982 and resided in the United States continuously for the duration of the statutory period. His declaration will be given nominal weight.

It is also noted that on April 8, 2005, the applicant submitted a Form I-690 Application for Waiver of Grounds of Inadmissibility, claiming that he was eligible for a waiver of inadmissibility under section §212(a)(6)(G) of the Act. The applicant was admitted on June 14, 1999 as an F-1 student and subsequently overstayed his student status. The waiver application was denied on November 15, 2006.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in relevant and probative information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 reliance upon affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687, I-589 and G-325A, 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--, 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.