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U.S. Citizenship
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FILE: [REDACTED]
MSC-04-269-10026

Office: NEW YORK

Date: **MAR 19 2008**

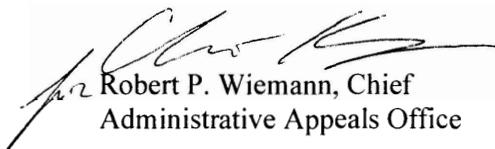
IN RE: Applicant: [REDACTED]

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. 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 district director should have approved his application because he submitted sufficient evidence to substantiate his eligibility for temporary resident status.

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. See CSS Settlement Agreement paragraph 11 at page 6 and 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.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 25, 2004. 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 and only address in the United States to be [REDACTED] apartment [REDACTED], Astoria, New York, from September of 1981 to August of 2006. [REDACTED]

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following attestations:

- An affidavit from [REDACTED] of [REDACTED], in which he stated that he has known the applicant since 1981, and that they have always been associated on friendly terms.

An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 when they met in Brooklyn, New York.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1983, and that he has personal knowledge that the applicant left the United States in October of 1987 and returned in December of 1987.

An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981.
- A letter from [REDACTED] in which she stated that she has known the applicant since 1982, and that they have gotten together several times.

Here, the affiants have failed to specify the frequency with which they communicated with the applicant during the requisite period. The affiants have not provided evidence that they themselves were present in the United States during the requisite period. Although the affiants attested to knowing the applicant during the requisite period, they have failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Though not required to do so, the affiants have not provided proof of their identity with their affidavits. The affiants [REDACTED] and [REDACTED] have failed to specify when in 1981 they first met the applicant. Neither [REDACTED] nor [REDACTED] has attested to knowing the applicant prior to January 1, 1982. Because the affidavits are significantly lacking in detail, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] in which he stated that the applicant lived with him and shared expenses for living quarters at [REDACTED], Astoria, New York, from March of 1983 to April of 1985. This statement is inconsistent with the applicant's Form I-687 application, at part # 30 where he indicated his place of residence was [REDACTED] from September of 1981 through August of 2006. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made by the affiant.

The applicant also submitted an affidavit from the president and secretary of [REDACTED] Masjid & Islamic Center, Inc., in which they stated that the applicant has greatly contributed to the development of the Center since March of 1983. This statement is inconsistent with the applicant's Form I-687 application, at part #31 where he was asked to list all affiliations and associations with churches, organizations, or clubs, in that he did not list any such affiliations. This inconsistency calls into question the affiants' ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration conflicts with what the

applicant showed on his Form I-687 application, doubt is cast on assertions made by the affiant. The affiant's statement conflicts with other evidence in the record, hence, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted the following employment attestations:

An affidavit from the representative of Deluxe Home Improvements, General Contractors, in which he stated that the applicant, whose address was [REDACTED] Astoria, New York, was employed by the company as a construction helper from December 1, 1981 to December 31, 1981.

An affidavit from the representative of Runa Deli and Grocery in which he stated that the Deli employed the applicant as a helper from February of 1982 to May of 1989, and that his wages were paid in cash.

Here, the affidavits do not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the representative from Runa Deli and Grocery does not specify the address(es) where the applicant resided throughout the claimed employment period. It is noted that neither employer states whether or not the information provided was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the affiants. Because the affidavits are not in compliance with regulatory standards and are lacking in specificity, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1982 and that they have gotten together several times.

A letter from [REDACTED] in which she stated that she has known the applicant since 1983, and that they have gotten together several times.

Here, the affiants do not attest to knowing the applicant since prior to January 1, 1982. The affiants fail to indicate how they came to know the applicant and the frequency with which they met with him during the requisite period. The affiants have not provided evidence that they themselves were present in the United States during the requisite period. Though not required to do so, the affiants have not provided proof of their identity with their affidavits. Because the affidavits are significantly lacking in detail, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the applicant had failed to provide evidence and/or argument to address his absence (break in residence) from the United States from October of 1987 to December of 1987. The director further noted that the applicant had failed to address the issue surrounding his statement made on his G-325A (Biographic Information) that he resided in Bangladesh from December of 1966 to August of 1985. The director also noted that the affidavits submitted by the applicant were not credible, were not amenable to verification, and did not appear to have been based upon the personal knowledge of the declarant.

On appeal, the applicant asserts that the director denied his application in error by not adequately reviewing the record and by not abiding by the applicable procedures. He further asserts that he tried to explain to Citizenship and Immigration Services officers during his LIFE Act interview his reason for being absent from the United States from October of 1987 to December of 1987, but that they failed to consider it. He asserts that the affiants who submitted attestations were present in the United States during the requisite period, and that they have direct personal knowledge of the events and circumstances leading to his presence in the country. The applicant also asserts that he has maintained continuous residence and has been physically present in the United States during the requisite periods. The applicant does not submit any additional evidence.

In the instant case, the applicant has failed to specifically address the issues raised by the director in her denial. There has been no evidence or argument made to explain the applicant's absence from the United States in 1987.¹ In addition, the applicant does not provide any explanation for the statement he made on his Form G-325A (Biographic Information) that he resided in Bangladesh from December of 1966 to August of 1985. It is further noted that the applicant indicated on his Form I-485, Application to Register Permanent Residence or Adjustment of Status at part #1, and on his Form I-765, Application for Employment Authorization, both filed on May 7, 2002, that the date of his last arrival in the United States was August 18, 1985. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

Here, the applicant has not provided any contemporaneous evidence of continuous unlawful residence in the United States throughout the requisite period, and he has submitted attestations that are not credible, are lacking in detail, and are not amenable to verification. In addition, the statements made by [REDACTED] and the secretary of Baitul Mukarram Masjid & Islamic Center, Inc. conflict with what the applicant showed on his Form I-687 application.

¹ The applicant indicated on his Legalization Front-Desk Questionnaire (Form I-687 Prelim) that he attempted to file his application on February 5, 1988.

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 contradictory statements on his applications and his 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 for the requisite period 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.