



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

41

FILE: [REDACTED]
MSC 05 155 11007

Office: NEW YORK

Date: **MAY 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:

[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.

RS 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. Specifically, the director found the affidavits submitted in support of the applicant's claim to be deficient and also pointed out that information provided by the applicant on a previously filed Form G-325 is inconsistent with the applicant's current claim. 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, the applicant asserts that he is eligible for the immigration benefit sought and attempts to explain the inconsistency addressed in the director's adverse decision.

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 evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden. The record shows that in addition to the Form I-687 adjudicated in the present matter, the applicant previously filed a Form I-485 under provisions of the Legal Immigration Family Equity (LIFE) Act, which was denied on October 23, 2002. In support of his claim that he has resided in the United States continuously in an unlawful status since prior to January 1, 1982, the applicant has provided the following documentation:

1. Third party declarations accompanied by picture identifications from the following individuals: [REDACTED], [REDACTED], and [REDACTED]. All nine individuals claimed to have known of the applicant's residence in the United States within the statutory period. Out of those nine individuals, only four actually claimed to have met the applicant prior to the commencement of the statutory period and of those four, only two individuals discussed the specific event that led to their first encounter with the applicant. Specifically, [REDACTED] claimed that the applicant approached him about renting a room at his residence. While [REDACTED] claimed that he first met the applicant in July 1980 when the applicant was looking for a job, the declarant failed to clarify how this resulted in his actually meeting the applicant, as he claimed that their acquaintance resulted from meeting "in the community gatherings." The remainder of the declarants provided statements similar in their content with regard to their encounters with the applicant, claiming that they generally met with the applicant through local community and/or religious gatherings. None of the declarants specified the frequency of their respective encounters with the applicant, nor did they provide any details about the applicant's life in the United States during the statutory period. As such, these documents

will be accorded minimal weight as evidence of the applicant's unlawful residence in the United States during the statutory time period.

2. A form declaration, similar to those discussed above, from the applicant's wife, [REDACTED] who claimed that the applicant informed her of his residence in the United States in 1976, when he did not return home from working on a ship. It is noted that [REDACTED] was only 13 years old in 1976. Moreover, at a March 13, 2006 interview with an officer of Citizenship and Immigration Services, the applicant claimed that he had been married once and clarified that the marriage took place in 1983 during one of his purported departures from the United States.¹ Therefore, [REDACTED]'s claimed personal knowledge of the applicant's presence in the United States since 1976 is questionable in light of the inconsistency between her statements and those provided by the applicant himself.
3. A notarized letter signed on January 27, 1991 by [REDACTED], assistant secretary of Islamic Counsel of America, Inc. [REDACTED] claimed that he had known the applicant since 1980 and that the applicant made great contributions to this organization. It is noted, however, that according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), attestations from churches, unions, or other organizations should include the applicant's address at the time of the claimed membership as well as the specific dates of the membership. This information was not included in the letter from [REDACTED]. Moreover, the applicant did not list his purported membership in Islamic Counsel of America, Inc. in No. 31 of his Form I-687, which asks the applicant to identify his affiliations or associations with organizations such as the one named herein. The record contains a similar letter dated May 16, 2006 from Julkifl Choudhury, vice present of the same organization. However, this letter is subject to the same criteria as that of [REDACTED], and it too is fraught with the same deficiencies as those discussed above. As a result of these various deficiencies, both letters will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
4. A letter dated October 26, 2004 on letterhead from Bangladesh Society Inc., New York signed by [REDACTED], the organization's general secretary who stated that the applicant has been a member since 1984. This letter also falls short of the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), as it includes only the applicant's current address and does not include the applicant's residential address at the time of his purported membership.
5. Four identical form affidavits from [REDACTED] and [REDACTED], whose affidavits are dated February 16, 2005, respectively, [REDACTED], whose affidavit is undated; and [REDACTED], whose affidavit is dated February 18, 2005. While all four affiants claimed to have had personal knowledge of the applicant's entry into the United States in 1976, none actually claimed to have met the applicant until years after the

¹ It is noted that the Form G-325A, which the applicant submitted along with his previously filed Form I-485, states that the applicant was married on May 7, 1982 rather than in 1983.

applicant's alleged 1976 entry into the United States. Further, all four affiants attested to the applicant's personal character, but provided no details to lend credibility to their alleged respective relationships with the applicant, which they claim have been ongoing for at least 20 years. Based on these deficiencies, these affidavits will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

6. An affidavit dated February 16, 2005 from [REDACTED] who claimed to have known the applicant since 1986. Although the affiant stated that the applicant had been working for her at her restaurant business since 2003, she failed to explain how she met the applicant approximately 17 years prior to the commencement of her business relationship with him. Further, the affiant provided no details that would lend credibility to her alleged 19-year relationship with the applicant. Accordingly, this affidavit will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
7. A photocopy of a crewman's landing permit containing the applicant's name, address and date of birth. The document is date stamped January 7, 1984. In the portion of the document requesting the address of the permit recipient, the words "agent Romart Philadelphia" have been filled in. It is unclear what relationship this has to the applicant or his address at the time of the date stamp. Further, since the applicant has provided a photocopy of this document rather than the original, the document's authenticity cannot be determined. However, even if the validity of this document were not in question, it still does not establish that the applicant has resided in the United States during any part of the statutory period as claimed.
8. A photocopy of a ticket issued on August 28, 1976 by the New York City Transit Authority. While this may be deemed contemporaneous evidence, this document was issued more than five years prior to the commencement of the statutory period. There is nothing identifying this document as belonging to the applicant. Moreover, even if the applicant were established as owner of the transit ticket, CIS cannot rely on this document to determine that the applicant continued to reside in the United States up until and throughout the duration of the statutory period.
9. An employment affidavit dated February 6, 2005 from [REDACTED] who claimed that he employed the applicant as a painter from 1981 through 1994. However, according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) with regard to past employment records, the employer must provide the applicant's address at the time of employment, the exact period of employment, and state whether or not the information was taken from official company records. The affiant did not provide the applicant's address at the time of employment. Further, although the affiant indicated that the applicant's employment commenced in the beginning of 1981 and ended at the end of 1994, the specific months the employment commenced and ended were not provided. The affiant also failed to state where he obtained the information and whether official company records exist showing the employment.

10. An affidavit dated February 16, 2005 from [REDACTED] who attested to the applicant's arrival to the United States in 1976. It is noted that the applicant only claimed that he has personally known the applicant since the 1980s. As such, this affiant lacks the capacity to attest to an event that predated his first encounter with the applicant.
11. An affidavit dated February 25, 2005 from [REDACTED] who claimed to have known the applicant for 28 years and attested to the applicant's arrival to the United States in August 1976. The affiant stated that the applicant lived with one of the affiant's friends until December 1980 and subsequently moved to another location. The affiant did not provide either of those addresses or any other details to lend credibility to his alleged 28-year relationship with the applicant. It is noted that in this affiant's prior declaration, discussed in No. 1 above, he stated that he met the applicant in September 1976 when the applicant approached him about renting a room. As the information provided by this affiant in his two statements is inconsistent, neither document can be deemed credible and, therefore, will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
12. A photocopied envelope showing the applicant as the originator and his wife as the addressee. It is noted that the postmark date on this envelope is illegible and the original document has not been provided for further scrutiny of the document's authenticity.
13. A photocopied handwritten sales receipt dated November 18, 1986 identifying "Siddique" as the buyer. Again, the applicant has failed to provide the original document to verify its authenticity. Furthermore, the document specifically refers to November 28, 1986 as a Tuesday. However, the date referenced is a Friday. Accordingly, this contemporaneous document cannot be deemed valid and will be given no weight as evidence of the applicant's residence in the United States during the statutory period.
14. A letter dated November 24, 1986 from [REDACTED], M.D. claiming that the applicant was under his treatment from March 9, 1982 to June 18, 1982. Mr. [REDACTED] further claimed that the applicant was last examined by him on December 10, 1982. As noted in the director's denial, further review of [REDACTED] professional history showed that this individual's medical license was revoked and the record contains no evidence showing that he was licensed during the period the applicant was purportedly under his care, thus undermining the validity of the statement made by [REDACTED] with regard to the applicant's medical history.
15. Identical form affidavits from [REDACTED], and [REDACTED] dated May 15, 2006, May 30, 2006, and June 9, 2006, respectively. All three affiants provided identical confusing statements regarding the date of their respective first encounters with the applicant suggesting that they met the applicant either in October 1976 or possibly 1981. Additionally, all three affiants claimed that they knew of the applicant's 1983/84 and 1986 absences, and all three identically claimed that they met the applicant when he was seeking assistance on subject matter that was undisclosed.

In addition to the many deficiencies discussed above, the director further questioned the applicant's credibility in light of information the applicant provided in Form G-325, which he filed along with his Form I-485. Specifically, the director noted that the applicant provided an address in Bangladesh as his residence from the date of his birth until July 1986. The director properly noted that this information significantly undermines the validity of the applicant's current claim that he has resided in the United States since prior to the commencement of the statutory period. 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). In the present matter, while the applicant claims that the information provided in the Form G-325 was the result of a typographical error, the questionable supporting evidence provided in support of the applicant's claim only further impugns his credibility and fails to resolve the considerable inconsistency created by the applicant.

Additional discrepancies have also been discovered by the AAO in its review of the applicant's record. Specifically, in addition to adverse observations made regarding the applicant's supporting documents, the AAO further notes that the applicant's claimed absences from the United States as noted in No. 32 of the Form I-687 are inconsistent with the dates of birth of the applicant's children as listed in Part 3, Item B of the Form I-485. Specifically, with regard to the applicant's children born within the statutory period, the dates of birth were as follows: a son born on January 1, 1984; a son born on February 1, 1985; and a daughter born on December 20, 1987. In Form I-687, No. 32, the applicant claimed that his first absence from the United States was from December 1983 to January 1984 and his only other absence was from June 10, 1986 to July 17, 1986. Additionally, the applicant stated during his interview that his wife has never been to the United States. In light of the birth date of the applicant's first child, if the applicant had not left the United States prior to December 1983, and his wife was never in the United States, it is unclear how he could have fathered a son born in Bangladesh in January 1984, whose date of conception had have been approximately April 1983. Similarly, it is unclear how the applicant could have fathered a child born in February 1985 if he departed Bangladesh prior to the child's conception and did not return to Bangladesh until after that child was born, or how the applicant could have fathered a child born in Bangladesh in December 1987 if he did not claim to have visited Bangladesh in 1987.

In summary, the applicant has provided deficient contemporaneous evidence of residence in the United States relating to the 1981-88 period. While the applicant submitted voluminous declarations and affidavits attesting to his residence, these documents were fraught with deficiencies and inconsistencies that preclude the AAO from relying on them as corroborating proof of the applicant's claim.

The absence of sufficiently detailed supporting 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 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.