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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: ATLANTA Date: APR 0 7 2009

MSC-06-097-11533

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

John F. Grissom
Acting 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 Director, Atlanta. 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status.

On appeal, counsel for the applicant asserts that the affidavits originally submitted with the application are sufficient and credible as evidence of the applicant's continuous residence in the United States throughout the requisite period. Further, counsel states that the applicant is a class member and that the director erred in denying the applicant's class membership. Counsel also indicates that the director should have instructed the applicant to appeal to the Special Master and not to the AAO.

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).

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, "[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 applicant 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 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.

On appeal, counsel for the applicant claims that the director erred in denying the applicant's class membership and indicates further that the AAO has no jurisdiction over the denial of the application for temporary resident status. Under the CSS/Newman Settlement Agreements, if the director denies the application solely because the applicant is determined to be a non-class member, the AAO shall have no jurisdiction over the denial of the application. Further, the denial notice shall explain the reason for the denial of the application for class membership and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

Here, the director denied the application because the applicant had not submitted credible evidence to establish his eligibility for the benefit sought. The director adjudicated the merits of the application and treated the applicant as a class member. Upon review, the AAO finds that the denial of the application was not based on the applicant's lack of class membership, and the appeal is, therefore, properly before the AAO and not the Special Master.

Under the regulations, eligibility for class membership does not translate into eligibility for temporary resident status. As stated above, in order to qualify for temporary resident status, the applicant must establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and that he maintained continuous and unlawful residence in the United States since that date through the date he filed or attempted to file the application for temporary resident status.

The issue here is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982, and continuously resided in the United States throughout the requisite period.

At his interview with a United States Citizenship and Immigration Service (USCIS) officer on October 5, 2006, the applicant indicated that he first came to the United States with his uncle in June 1981 through New York. He stated further that he left the United States in November 1982 and returned in December 1982. When asked if he had proof of those two entries into the United States in 1981 and 1982, the applicant stated he had none.

At a previous interview on July 15, 1991, the applicant stated that he first entered the United States in June 1981 and had two exits from the United States during the requisite period, from November 1982 to December 1982 and between June 1985 and July 1985. The applicant indicated that he was legally admitted to the United States as a visitor in June 1981, December 1982, and July 1985. The applicant's Form I-687 filed in 1991 as well as his current application for temporary resident status fail to mention the 1985 exit. The applicant also did not indicate his absence from the United States in 1985 to the interviewing officer in 2006. This absence is material in that it occurred during the required period of continuous residence. Further, on both the current and the previously filed Forms I-687 the applicant stated that he first worked in the United States beginning in February 1981, a date prior to his stated arrival. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

As evidence of his continuous residence in the United States since June 1981, the applicant submitted a letter from the Bangladesh Embassy dated July 29, 1991 and five affidavits from former employers and landlords.

The letter from the Bangladesh Embassy states that the applicant had been issued two passports in Dhaka, Bangladesh, on August 15, 1980 and March 6, 1990, that were both declared lost. The letter does not establish the applicant's entry into the United States before January 1, 1982 or his continuous residence in the United States throughout the requisite period.

The affidavit from [redacted] states that the applicant worked as a busboy at [redacted] from February 1981 to June 1985 and that he was paid $3.50 per hour. [redacted] in his affidavit claims that the applicant was a waiter at [redacted] from June 1985 to November 1990. [redacted] states in his affidavit that he employed the applicant at his construction company as a painter from January 1986 to June 1990. Their sworn statements, however, lack probative value because they fail to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiants fail to provide information about where the applicant resided at the time of employment, what his specific duties with the company were, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records. Further detracting from the credibility of the affidavit from [redacted] is the author's statement that the applicant started to work at the restaurant in February 1981, a date which was before the applicant first stated entry into the United States in June 1981. Moreover, [redacted] fails to include his title or position in the company, further weakening the probative value of this evidence.

[redacted] also states in another affidavit that the applicant is his close relative and lived with him from when he first came to the United States in 1981 to December 1985. The address where he states he lived with the applicant during this time is not the same address listed on the Forms I-687 for the same time period. [redacted] offers no detailed information about his relationship with the applicant such as how he first met him in the United States or whether the applicant paid any rent or shared any bills while staying with him. The affiant also fails to submit contemporaneous documents to establish that he resided in the United States during the period specified in his affidavit. Simply listing the address where the applicant lived during the requisite period without providing any detail about the nature of his relationship with the applicant is not persuasive as evidence that the affiant has knowledge of the applicant's residence in the United States during the requisite period. The inconsistencies with the applicant's Form I-687, the lack of detail, and the absence of contemporaneous documents materially reduce the probative value of [redacted] sworn statements.

in his affidavit claims that he has known the applicant for a long time since the applicant is a friend of the family. He asserts further that the applicant stayed with him from 1986 to December 1990 at his apartment on [redacted] in Long Island City, New York, and paid $150 per month for room and board. As stated by the director, the quality of an affidavit determines whether it is credible, truthful, and probative. *Matter of E-M-, supra.* To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. *Id.* Since this affidavit does not describe with sufficient detail how long the affiant has known the applicant, how he first met the applicant in the United States, or whether he has direct personal knowledge of the applicant's residence in the United States

since 1981, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the noted inconsistencies, and the lack of detail in the record detract 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, 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.

Beyond the decision of the director, based on the applicant's testimonies in connection with his applications for temporary resident status in 1991 and 2006, the AAO notes that his reentry into the United States with a visitor's visa in July 1985, if true, is inconsistent with his intention to resume permanent residence in the United States, on that date. Thus, the applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.