

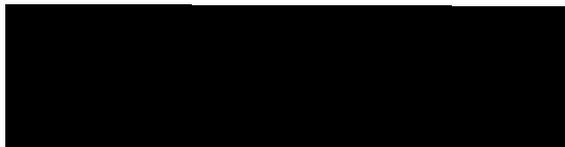
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC 05 168 11103

Office: NEW YORK

Date: **JUN 26 2009**

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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, New York, 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 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 has submitted evidence to establish continuous residence in the United States during 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 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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 (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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

At the time the applicant filed his initial Form I-687 application in 1991, the applicant, in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, submitted:

- A statement from [REDACTED] who attested to the applicant’s presence in the United States prior to 1982. The affiant, who was residing in Bangladesh at the time, indicated that he was informed by his parents of the applicant’s arrival in the United States. The affiant indicated that he entered the United States in 1982.
- A statement from [REDACTED] who indicated that he first met the applicant in 1986 at the time the applicant was looking for a job.

- A statement from [REDACTED] who indicated that he first met the applicant at [the applicant's] job in April 1982. The affiant indicated the applicant would meet him if he had any construction work for the applicant
- A statement from [REDACTED] who indicated that he first met the applicant at Madina Masjid in 1983. The affiant indicated, "the time you are looking for information we used to live in the same address apt." The affiant indicated he was residing at [REDACTED] New York, New York during the requisite period.
- A statement from [REDACTED] who indicated that he first met the applicant in July 1981 and that during the requisite period, the applicant was in his employ and resided in his home at [REDACTED]
- A statement from [REDACTED] who indicated that he first met the applicant at his place of employment in Brooklyn in 1981. The affiant attested to the applicant's residence and employment with [REDACTED]
- A statement from [REDACTED], who indicated that he met the applicant in the United States before 1982 and the applicant "started sharing living with me from 01/1982." The affiant indicated that he was residing at [REDACTED], New York during the requisite period.

At the time the applicant filed his current Form I-687 application, the applicant submitted:

- Affidavits from [REDACTED] who amended his statement to indicate that the applicant resided with him from July 1981 to December 1981 and was in his employ at his construction firm from December 1981 to 1986. The affiant attested to the applicant's residences in Woodside, New York from January 1982 to November 1986 and in New York City from December 1986 to June 1990.
- A photocopied letter dated December 20, 2004, from [REDACTED] of Islamic Council of America Inc., who indicated that the applicant has regularly participated in weekly prayers and other occasions since 1981.
- A photocopied letter dated August 25, 2004, [REDACTED] general secretary of Bangladesh Society Inc., New York, who indicated that the applicant has been a member since 1984.
- An affidavit from [REDACTED] who amended his statement to indicate that the applicant resided with him from January 1982 to November 1986.

The applicant also submitted affidavits from three individuals who attested to his February 1987 to March 1987 absence from the United States. The affidavits, however, have no probative value as the affiants indicated that they first met the applicant *subsequent* to the period in question.

On January 31, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

The applicant, in response submitted copies of documents that were previously submitted along with:

- Affidavits from [REDACTED], [REDACTED] and [REDACTED] who attested to the applicant's residence in the United States since July 1981 and to his absence from the United States from February 20, 1987 to March 25, 1987.
- Three metered envelopes with indecipherable postmarks.
- A photocopied letter dated November 10, 1984, from Emigrant Bank in New York City, which requested the applicant's social security number in order to continue his account with the bank.
- A photocopied letter dated June 10, 1987, from [REDACTED] of Brooklyn, New York, who indicated that he first examined the applicant on February 25, 1982.
- A photocopied money order addressed to the Immigration and Naturalization Service dated "3/88".
- A photocopied letter dated October 1, 1987, from the general secretary of Islamic Council of America Inc., in New York City, who indicated that the applicant has been known to the council since 1981 and the applicant attends Madina Masjid every Friday at the mosque.
- Photographs the applicant claimed were taken in 1986 at Indian Cuisine and in 1981 in Montreal, Canada.

The director determined that: 1) the bank letter was fraudulent as it did not contain the necessary information contained in correspondence from banking institutions. Specifically, the letter did not contain a telephone number for the bank and no account number was listed; 2) the photographs do not establish presence in the United States during the requisite period; and 3) the affidavits were not amenable to verification as they did not list a telephone number. The director concluded that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on June 6, 2007.

On appeal, the applicant asserts that the director has overlooked his earlier response where he had explained his situation. The applicant asserts, "I have been blamed with all the accusations by the Service" because he does not have sufficient documents to meet the Service's demand. The applicant asserts that all the affiants are willing and able to confirm their statements in good faith to the extent that their memory services. In regards to the letter from Emigrant Bank, the applicant asserts, in pertinent part:

I do not have any physical evidence currently that truly I used to have a bank account which has been closed due to not having social security number at that time. And about the bank phone number - as the bank was an old photocopy record, it might have been erased somehow and to get a good copy it has been copied many times. Honestly, I do

not remember the account number presently but the reference number was listed on that letter.

A review of the bank's letter does not support the applicant's statement as no reference number was listed.

The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

The probative value of the letters is limited in that they are photocopies rather than originals. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.12(f).

The authenticity of the postmarked metered envelopes can neither be confirmed nor denied.

The letters from Islamic Council of America Inc., and Bangladesh Society Inc., New York have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest.

As previously noted, the photograph at the Indian Cuisine has no identifying evidence which would serve to prove or imply that the photograph was taken in the United States in 1986.

The employment affidavit from [REDACTED] failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statements from [REDACTED] and Mr. [REDACTED] have been submitted to resolve their contradicting statements. As such, the documents have little probative value or evidentiary weight.

The affidavits provided by the remaining affiants do not provide sufficient detail to establish that the witnesses had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 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 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 applicant's reliance upon documents with minimal or no 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 May 4, 1988 as required under section 245A(a)(2) of the Act. 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.