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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 14 2010

MSC 05 138 10188

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 National Benefits Center. 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.

Perry Rhew
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is no longer authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a statement.

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).

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).

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 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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on February 15, 2005. The director denied the application on September 10, 2008.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he resided in the United States for the duration of the requisite period. In support of his claim, the applicant has submitted the following documentation throughout the application process:

Organization letter

1. A letter from [redacted]., stating the applicant had contributed towards the development of the center since November 1984.

The above attestation does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not show the applicant's inclusive dates of membership and the address(es) where the applicant resided throughout the membership period. Furthermore, it does not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

Employment letters

2. A letter from stating the applicant worked with him on a part-time daily basis from 1982 to 1984.
3. A letter from [redacted] stating the applicant had been employed in agricultural labor from May 1, 1985 to May 1, 1986.
4. A letter from [redacted]. stating the applicant had been employed from May 1, 1986 to June 26, 1987.

The employment letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i). No. 3, above, fails to provide the applicant's address at the time of employment; No. 2 does not identify the exact period of employment; and, none show periods of layoff or declare whether the information was taken from company records, 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.

Affidavits

5. Letters from [redacted] stating he had known the applicant since 1981; [redacted] stating the applicant lived with him at [redacted] in Brooklyn, New York, from 1981 to 1983; [redacted] stating he had known the applicant since 1981 and that they shared a house at [redacted] in Brooklyn, New York, from February 1983 to November 1985; and, [redacted] stating he had known the applicant since 1981

6. A letter, notarized on October 12, 1988, from of Pompano Beach, Florida, stating "[T]his letter is to state that stayed with me during his time of employment on [redacted]

The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant, and their statements lack details that would lend credibility to their claims. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite period. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States since on or before January 1, 1982.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries; children's birth certificates; bank book transactions; letters of correspondence; a Social Security card; automobile, contract, and insurance documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of four third-party affidavits ("other relevant documentation") attesting to his presence in the United States prior to January 1, 1982. The documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period, and are not supported by corroborative documentation.

Furthermore, there are discrepancies noted in the record. Although the applicant asserts that he never produced a letter from anyone named [redacted] the letter is included in his alien registration file. Although the applicant claims to have resided in the United States since 1981, his alien registration file contains a Form G-325, Biographic Information Sheet, signed by the applicant on March 14, 2002, on which he listed his address from birth through October 1987 as being in Begumgonj, Bangladesh. Also, the applicant has provided three different dates as his last date of entry into the United States: 8/87 on his Form I-687; 10/22/87 on a Form I-485, Application to Register Permanent Resident of Adjust Status, signed by him on March 15, 2002; and 9/22/87 on a Form for Determination of Class Membership, signed by him on October 19, 1991.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The discrepancies in the record and the lack of verifiable documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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. It is concluded that the applicant 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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