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U.S. Citizenship
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Services

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[Redacted]

FILE:

MSC-05-132-11132

Office: NEW YORK

Date:

AUG 02 2007

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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, on February 9, 2005. The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that his Form I-687 application was considered filed with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

The director issued a Notice of Intent to Deny (NOID) the I-687 application on February 6, 2006, noting that the affidavits submitted by the applicant in support of his claim were neither credible nor amenable to verification, as they did not include a current phone number for the affiant and were not accompanied by proof that the affiant was in the United States during the statutory period or that there was a relationship between the affiant and the applicant. In rebuttal the applicant submitted his own affidavit attesting to his entry into the United States before 1982 and his residence during the requisite period. He also submitted identity documents for two of the affiants, [REDACTED] and [REDACTED] a telephone number for the former; passport pages for a third affiant, [REDACTED]; and printouts from the Division of Corporations of the New York Department of State as proof that two of his claimed places of employment existed during the relevant time periods. The director found these additional submissions insufficient to overcome the grounds for denial, noting that the applicant did not submit a working daytime telephone number for any affiant.

The director's decision also noted that the applicant had failed to provide any tangible evidence or credible documentation in support of his claim, such as receipts, medical invoices, school records, utility bills, pay stubs or other such documentation and had therefore failed to demonstrate by a preponderance of the evidence that he was eligible for temporary resident status. The director added that "according to [the applicant's] Form I-687 application, [he] did not submit an application for amnesty during the statutory period of May 5, 1987 through May 4, 1988, as required for CSS/Newman (LULAC) class membership," and found him ineligible for temporary resident status on that basis as well.

On appeal, the applicant, through counsel, resubmits the affidavits and identity documents that had been submitted in support of the applicant's claim of residence, asserting that they are credible "because, in fact, the affidavits have supporting or identifying documentations." The applicant also asserts that CIS erred in concluding that he did not submit an application during the statutory period as required for CSS/Newman (LULAC) Class Membership. Counsel correctly points out that the applicant indicated

appropriately on the Form I-687 Supplement that he had been turned away when attempting to apply for legalization, which is a requirement under the CSS/Newman Settlement Agreements. The director's conclusion that the applicant is ineligible for temporary resident status because he did not submit an application for amnesty during the statutory period is mistaken. The applicant's failure to submit his application during that period can not be a basis for the denial of the I-687 application. The AAO finds that the director correctly denied the I-687 application because the affidavits submitted were not credible, and notes, however, that there is no requirement to submit the "tangible evidence" listed by the director in order to establish eligibility.

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 from November 6, 1986 until the date of filing. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The

credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence is not sufficient; the affidavits submitted are not relevant, probative and credible.

The record contains the following evidence of residence in support of the claims made by the applicant on his Form I-687:

1. A letter dated October 20, 2004 signed by [REDACTED], President, Bangladesh Society, Inc., on letterhead of the Bangladesh Society, including an address and telephone number in Elmhurst, New York. The letter is consistent with the applicant's claim of membership in the Bangladesh Society; it provides the applicant's current address and certifies that, "as per [their] record" he is an active member and was a member from 1983 to 1987. The letter is not a sworn statement and is not notarized. The "record" referred to is not included. There is no accompanying documentation to identify the writer or show his connection to the organization and no evidence that he was in the United States during the requisite time period.
2. An affidavit dated November 9, 2004 by [REDACTED]. It provides the applicant's current address and certifies that the affiant was with the applicant when the applicant tried to file his legalization application in 1987. The affiant states that the applicant was turned away by an INS officer because of the applicant's short absence from the United States. He provides his current address and telephone number in Brooklyn, New York; a copy of the data page of his U.S. passport, issued in New York in December 2004; and a New Jersey driver's license issued in 2003. There is no evidence that the affiant resided in the United States in 1987 and no details about his relationship with the applicant.
3. An affidavit dated November 2, 2004 by [REDACTED]. It provides the applicant's current address and certifies that the applicant resided with the affiant at [REDACTED] in Brooklyn

from May 1981 to July 1982 and at [REDACTED] in Brooklyn from August 1982 to September 1984. The affiant provides his current address in Ozone Park, New York; but no telephone number. He also provides a copy of the data page of his U.S. passport, issued in New York in December 2001, and a June 2005 heating bill in his name at his current address. The places and dates of residence are consistent with the applicant's I-687, but there is no accompanying evidence that the affiant lived at those residences or that he was in the United States during the time periods indicated.

4. An affidavit dated November 12, 2004 by [REDACTED] It provides the applicant's current address and certifies that the applicant resided with the affiant at [REDACTED] in Brooklyn from October 1984 to October 1987. The affiant provides his address in Brooklyn, but no telephone number. The place and dates of residence are consistent with the applicant's I-687, but there is no accompanying evidence that identifies the affiant or that indicates that he lived at that residence or that he was in the United States during the time periods indicated.
5. An affidavit dated October 9, 2004 by [REDACTED] It provides the applicant's current address and certifies that the applicant was a construction worker for the affiant at his company, [REDACTED] Contracting Company, Brooklyn, from 1981 to 1984 "to the best recollection of knowledge," and that the affiant has known him personally since 1981. The record also includes a March 2006 printout from the Division of Corporations of New York State Department of State indicating that a [REDACTED] Contracting Company existed in Brooklyn as of November 1981 but was currently inactive. The affiant lists his current address as [REDACTED] New Jersey, which matches the address provided by the applicant on his I-687 application for his employer, the [REDACTED] Contracting Company, from 1981 to 1984, although it does not appear to be the address of the Brooklyn company. The affiant provides a copy of several pages of his cancelled Bangladeshi passport indicating that he entered the United States in 1981, 1982, and 1985. There is no evidence that the affiant ever owned the [REDACTED] Contracting Company or had any long term relationship with the applicant, and no evidence that the affiant has been in the United States during the requisite time period other than entries in the years noted. The affidavit also lacks credibility in that it is not accompanied by employment records or an explanation of why such records are not available.
6. An affidavit dated October 30, 2004 by [REDACTED] who identifies himself as the owner of the Asian Oriental Food Store in Brooklyn. The affidavit is written on letterhead for the store; it provides the applicant's current address and certifies that the applicant worked for the affiant's grocery store from July 1984 to April 1986 and that the affiant has known him personally since 1984. The record also includes a March 2006 printout from the Division of Corporations of New York State Department of State indicating that an Asian Oriental Food Store existed in Brooklyn as of July 1984 but was currently inactive. There is no accompanying evidence that identifies the affiant or that indicates that he ever owned the Asian Oriental Food Store or had any long term relationship with the applicant, and no evidence that the affiant has been in the United States during the requisite time period. The affidavit also lacks credibility in

that it is not accompanied by employment records or an explanation of why such records are not available.

The affidavits described above, some submitted with supporting documents, are consistent with the dates and places of residence and employment provided by the applicant on his Form I-867 application and mirror the applicant's claims without exception. However, they lack credibility for the reasons noted. Only two of the affiants claim to have known the applicant before 1982, one as an employer and one as a roommate. However, their statements lack any detail beyond confirming the Form I-867 information, and they have provided neither information nor proof regarding residence in the United States during the time periods they claim to have known the applicant; the employer's affidavit is not probative in that it lacks any document to indicate that the affiant was the owner of the business as claimed and does not include past employment records or any details expected of an employer regarding such records. *See* 8 C.F.R. § 245a.2(d)(3)(i). These affidavits do not support a conclusion that the applicant entered the United States before 1982. Moreover, other than stating that they have known each other during the relevant time period in the United States, none of the affiants provided any detail regarding their relationship with the applicant. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period. For the above noted reasons, the documents submitted as evidence of entry and residence lack relevance, probative value and credibility.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 lack of credible supporting documentation and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to meet his burden of proof and 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.

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