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**U.S. Citizenship  
and Immigration  
Services**

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[Redacted]

FILE: [Redacted]  
MSC-05-188-14262

Office: NEW YORK

Date: JUL 17 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.

  
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 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 he attempted to file a Form I-687, Application for Status as a Temporary Resident, 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.

On appeal, the applicant asserts that he has resided in the United States during the statutory period of January 1, 1982 through May 4, 1988.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on April 6, 2005. The applicant signed this application under penalty of perjury certifying that the information contained in the application is true and correct. Part 30 of this application requests the applicant to list his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Woodside, New York from December 1981 until December 1988. Part 32 of this application requests the applicant to list his absences from the United States since his entry. The applicant responded that he was in Bangladesh from June 30, 1985 until August 2, 1985. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with A.M.H. Ali Construction Firm in Brooklyn, New York from January 1982 until 1988. Although this information indicates that the applicant resided in the United States during the requisite period, it is inconsistent with documentation contained in the applicant's record.

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 Act, 8 U.S.C. § 1255a(a)(2). An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason."

On March 25, 2002, the applicant filed a Form I-485, Application for Adjustment of Status, under the Legal Immigration Family Equity Act (LIFE Act). The applicant signed this application under penalty of perjury, certifying that the information contained in the application is true and correct. The applicant provided on his Form I-485 that his last date of arrival in the United States was August 22, 1985. The applicant filed with this application a Form G-325A, Biographic Information Form, which provides that the applicant resided in Uttara, Bangladesh from May 1967 until August 1985. These inconsistencies draw into question whether the applicant continuously resided in the United States during the requisite period. The first issue is whether the applicant actually first entered the United States on August 22, 1985, instead of December 1981, as listed on his Form I-687, filed under the CSS/Newman Settlement Agreements. If the applicant is able to overcome the first issue, the second issue is whether the applicant was absent from the United States from June 30, 1985 until August 2, 1985, as listed on his Form I-687, filed under the CSS/Newman Settlement Agreements, or was absent from June 30, 1985 until August 22, 1985.

The aforementioned inconsistencies were addressed in the director's Notice of Intent to Deny (NOID), dated August 29, 2005. The applicant was granted thirty (30) days to respond to the NOID and submit additional evidence. Counsel for the applicant submitted a rebuttal, which provides that the information contained in the Form G-325A and the Form I-485, are typographical or clerical errors, which are negated by other submitted applications and documents in the applicant's record. Counsel submitted *copies* of applications the applicant *allegedly* filed with CIS, which contain information to support the applicant's claim of continuous residence during the requisite period. Counsel submitted a typed Form for Determination of Class Membership in CSS v. Thornburgh, signed December 15, 1992; a Form I-687, Application for Temporary Resident Status, signed October 10, 1987; a typed Legalization Front-Desking Questionnaire, signed January 8, 2003; a Form I-765, Application for Employment Authorization, signed April 4, 2005; and a Form I-687, Application for Temporary Resident Status, filed under the CSS/Newman Settlement Agreements, signed April 4, 2005.

Counsel also submitted and a notarized statement from [REDACTED], dated September 10, 2005, which states that she had dinner with the applicant on August 2, 1985. The director's subsequent Notice of Decision provides, "a review of the record, including the documents you sent in your recent response shows that there are many inconsistencies in your claims of when you first left the United States. In addition to the documents you sent, the record contains an affidavit from you, an affidavit from your mother, and your previously filed Form I-485, all of which state that you entered the United States on August 22, 1985." On appeal, the applicant provides in his statement, "after all these 25 years it doesn't make much difference to me whether my last entry date in the USA was August 2, 1985 or 8/22/1985 when I have to face Immigration for this clerical error everyday." The applicant submitted copies of three notarized statements from his friends, a letter from the Islamic Council of America, Inc., a letter from [REDACTED], two retail receipts, a stamped envelope addressed to him, and a letter from The Language Lab school, as evidence of his continuous residence during the requisite period.

However, the additional evidence submitted by the applicant is inconsistent with previously submitted documentation contained in his record. The previously submitted documentation contradict the applicant's claim that he has resided in the United States from December 1, 1981, and has been absent from the United States on one occasion, from June 30, 1985 until August 2, 1985. The applicant's record contains the following inconsistencies:

- The applicant submitted a copy of a typed, Form I-687, Application for Status as a Temporary Resident, which is dated October 10, 1987. This application provides that the applicant last entered the United States on August 22, 1985. Part 35 of this application requests the applicant to list all of his absences from the United States since his entry. The applicant responded that he was absent from the United States from June 1985 until August 1985. The applicant signed this document under penalty of perjury certifying that the information contained in the application is true and correct.
- The applicant submitted a copy of a handwritten, Form I-687, Application for Status as a Temporary Resident, which is dated November 20, 1987. This application provides that the applicant last entered the United States on August 22, 1985. The applicant signed this document under penalty of perjury certifying that the information contained in the application is true and correct.
- The applicant submitted a copy of a Legalization Front-Deskling Questionnaire, dated, February 10, 2000, which provides that he was absent from the United States from July 15, 1985 until August 22, 1985.
- The applicant submitted a notarized statement from his mother, dated September 9, 2002, which provides that the applicant was absent from the United States from July 15, 1985 until August 22, 1985.
- The applicant submitted a notarized and sworn statement, dated September 18, 2002, which provides that he first entered the United States on September 4, 1981 and was absent from the United States from between July 15, 1985 through August 22, 1985.
- On March 25, 2002, the applicant filed a Form I-765, Application for Employment Authorization, which provides that he last entered the United States on August 22, 1985.

The applicant is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Evidence that the applicant creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. The inconsistencies found in the applicant's previously submitted documentation seriously detracts from the credibility of his claimed residence during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. An applicant may also provide "any other relevant document" as proof of her residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted numerous statements and letters to corroborate his period of continuous residence during the requisite period. However, these documents do not overcome the inconsistencies found in the applicant's record.

The applicant submitted notarized "fill in the blank" form statements from [REDACTED] and [REDACTED]. However, these statements lack significant detail. The statements fail to provide *details* on the author's first meeting with the applicant and the extent of their contact during the requisite period. These statements also fail to provide the applicant's address or any other information regarding the applicant's residence during the requisite period. Moreover, the statement from [REDACTED] provides that she has known the applicant since August 2, 1985, however she testifies that the applicant has been continuously present in the United States from December 1981. Further, the applicant previously submitted a notarized letter from [REDACTED] dated September 10, 2005, which provides, "Between 1984 to 1985 [REDACTED] and I met in New York during family visits." This letter is inconsistent with [REDACTED]'s notarized statement, dated February 2, 2006, which provides, "I have known to [sic] [REDACTED] since 08/02/1985."

The applicant submitted a letter from [REDACTED], former Imam of the Islamic Council of America, Inc., [REDACTED]. This letter provides, "[w]hen I was the Imam of [REDACTED] from 1982 – 1986, I used to see [REDACTED] sometimes during the Friday prayers and other Islamic holidays coming to the Masjid." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches, unions or other organizations, should show the applicant's inclusive dates of membership and state the address where the applicant resided during the membership period. The letter from [REDACTED] fails to satisfy these delineated guidelines. Moreover, the applicant's record contains three Form I-687 applications, two of which have inconsistent information on the applicant's membership with the [REDACTED]. The applicant's Form I-687

applications, dated October 10, 1987 and November 20, 1987, respectively, fail to provide any information on the applicant's membership with [REDACTED]. Part 34 of these applications requests the applicant to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant responded "None" to this part of both applications.

The applicant submitted a letter from [REDACTED], dated March 27, 1987, which provides, "[t]his letter is to verify that [REDACTED] . . . was examined by me sometimes on March 1983 due to his Appendix pain. He has been under my medical care for two weeks." This letter lacks detail in that it fails to identify the exact dates of medical treatment by [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that medical records must show the dates of medical treatment.

The applicant submitted copies of two retail receipts containing his name, dated August 7, 1985 and February 14, 1983, respectively. The applicant also submitted two copies of envelopes addressed to him at his address in New York, respectively postmarked February 1987 and December 19, 1983. Since these documents are copies, they are not probative of the applicant's residence in the United States during the requisite period. 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.2(d)(6).

The applicant submitted a copy of a notarized letter from [REDACTED] Office Manager, The Language Lab. This letter provides, "[REDACTED] has been a student of our The Language Lab from August 1983 to July 1984. During this period he took several English courses but failed the Language Lab class test due to his irregular class attendance even though he has attended classes till July 1984." This letter fails to show the applicant's *continuous* residence in the United States because it provides that the applicant maintained an "irregular class attendance."

The applicant has submitted five unsigned "fill in the blank" declarations from persons who purportedly knew him during the requisite period and two "fill in the blank" declarations from persons who knew him subsequent to the requisite period. The declarations from persons who purportedly knew the applicant during the requisite period are not probative evidence of the applicant's residence during the requisite period because they lack significant detail.

- The declaration [REDACTED] provides that he has known the applicant since June 1986. Part 14 of this declaration requests the declarant to describe his contact with the applicant between 1982 and 1988. [REDACTED] responded, "[d]uring that time we do not [sic] have that much meeting because of busy work schedules."
- The declaration from [REDACTED] provides that he has known the applicant since 1980 in Bangladesh. Part 14 of this declaration requests the declarant to describe his contact with the applicant between 1982 and 1988. [REDACTED] responded, "I met the applicant after I reached USA and almost all religious holidays we religious holidays we celebrated together." [REDACTED] declaration indicates that he entered the United

States in 1986, therefore he did not have contact with the applicant between 1982 and his entry date in 1986.

- The declaration from [REDACTED] provides that she does not remember the exact date she met the applicant. Part 14 of this declaration requests the declarant to describe her contact with the applicant between 1982 and 1988. [REDACTED] responded, “[w]e have no contacts [sic] during that time.”
- The declaration from [REDACTED] provides that he does not remember the exact date he met the applicant. Part 14 of this declaration requests the declarant to describe his contact with the applicant between 1982 and 1988. [REDACTED] responded, “[w]e have no contacts [sic] during that time.”
- The declaration from [REDACTED] provides that she does not remember the exact date she met the applicant. Part 14 of this declaration requests the declarant to describe her contact with the applicant between 1982 and 1988. [REDACTED] responded, “[w]e have no contacts [sic] during that time.”
- The declaration from [REDACTED] provides that she has known the applicant since 1984. [REDACTED] provides that she first met the applicant in a cultural program of Bangladesh Society at Elmhurst, New York. This declaration is inconsistent with a subsequent notarized statement submitted by [REDACTED], as discussed above. The applicant’s file contains a notarized statement from [REDACTED] dated February 2, 2006, which states that she has known the applicant since August 2, 1985. [REDACTED] provides in this affidavit that she first met the applicant in Bronx, New York at a birthday party dinner.

The applicant submitted two letters from his purported former employers, A.M.H. Ali Construction and Dewan Construction Co. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and must include: (A) Alien’s address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien’s employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer’s willingness to come forward and give testimony if requested.

The letters from A.M.H. Ali Construction and Dewan Construction Co. do not meet the criteria delineated in the regulations. The letter from A.M.H. Ali Construction provides that the applicant was a construction helper from January 1982 until the end of 1988. The letter from Dewan Construction Co. provides that the applicant was a part time construction helper from 1986 until 1990. These letters fail to provide the applicant’s address during the time period of

his purported employment. The letters also fails to explain whether the authors have personal knowledge of the applicant's employment. Furthermore, the letters fail to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable.

The applicant submitted a "fill in the blank" notarized statement from [REDACTED] dated October 10, 1992. This statement provides that [REDACTED] has known the applicant from December 1981 until the present. This statement lacks considerable detail. This statement fails to provide detailed information on [REDACTED] first meeting with the applicant. It also does not provide information on [REDACTED] contact with the applicant during the requisite period. Finally, this statement fails to provide a phone number to contact [REDACTED] to verify his testimony.

The applicant submitted a notarized statement from [REDACTED] which provides that he has known the applicant since June 1986. This statement contains internal inconsistencies. [REDACTED] states in his statement that he personally knows that the applicant arrived in the United States without inspection in December 1981. However, [REDACTED] first met the applicant in June 1986, making his personal knowledge of the applicant's entry in December 1981 improbable. Moreover, this statement fails to provide a phone number to contact [REDACTED] to verify his testimony.

The applicant submitted a letter from [REDACTED] General Secretary of the Bangladesh Society, Inc. This letter provides that the applicant is a member of the organization and has volunteered in cultural and ceremonial events since 1984. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by churches, unions or other organizations, should show the applicant's inclusive dates of membership and state the address where the applicant resided during the membership period. The letter from [REDACTED] fails to satisfy these delineated guidelines. Moreover, the applicant's record contains three Form I-687 applications, two of which have inconsistent information on the applicant's membership with the Bangladesh Society, Inc. The applicant's Form I-687 applications, dated October 10, 1987 and November 20, 1987, respectively, fail to provide any information on the applicant's membership with the Bangladesh Society, Inc. Part 34 of these applications requests the applicant to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant responded "None" to this part of both applications.

The applicant submitted two notarized statements from [REDACTED] both notarized on March 28, 2005. One statement is on [REDACTED]'s letterhead and provides "[REDACTED] . . . has worked for me as office and house cleaner, snow cleaner part time since 1987 in my office . . ." The second statement is written on a "fill in the blank" form, which provides that [REDACTED] first met the applicant in September 1986. This statement contains internal inconsistencies. [REDACTED] provides in her statement that she personally knows that the applicant arrived in the United States without inspection in December 1981. However, [REDACTED] first met the applicant in September 1986, making her personal knowledge of the

applicant's entry in December 1981 improbable. [REDACTED] statement that she first met the applicant in September 1986 is also inconsistent with her aforementioned letter, dated March 27, 1987, which provides, "[t]his letter is to verify that [REDACTED] . . . was examined by me sometimes [sic] on March 1983 due to his Appendix pain. He has been under my medical care for two weeks."

The applicant submitted another "fill in the blank" notarized statement from [REDACTED]. This statement also contains internal inconsistencies. [REDACTED] states in her statement that she personally knows the applicant arrived in the United States without inspection in December 1981. However [REDACTED] also provides in her statement that she first met the applicant in 1984, making her personal knowledge of the applicant's entry in December 1981 improbable. Moreover, this statement is again inconsistent with a subsequent notarized statement submitted by [REDACTED] as discussed above. The applicant's file contains a notarized statement from [REDACTED] dated February 2, 2006, stating that she has known the applicant since August 2, 1985.

The applicant submitted another notarized statement from [REDACTED] dated February 22, 2005. This statement provides some details of [REDACTED]'s contact with the applicant during the requisite period and the applicant's residence in the United States during the requisite period. However, this letter does not contain a phone number to contact [REDACTED] to verify his testimony. Moreover, this letter alone, does not establish by a *preponderance of the evidence* the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to clarify the inconsistent and conflicting testimony by independent and objective evidence, pursuant to *Matter of Ho, supra*. 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 with the Service, 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.