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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 174 10353

Office: NEW YORK Date: OCT 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: SELF-REPRESENTED

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 be "R. 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 district 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 reiterates his claim of continuous residence in the United States during the requisite period and submits additional evidence in support of his claim.

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. 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.

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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 23, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at "[redacted]" from November 1981 to June 1984, at "[redacted] New York" from July 1984 to August 1986, and at "[redacted]" from September 1986 to the filing date of the application. At part #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Bangladesh visiting family from July to August 1985 and from September to November 1987.

During his interview with a CIS officer on February 1, 2006, the applicant stated oath that he first entered the United States on October 18, 1986. The applicant signed a sworn statement certifying under penalty of perjury that his sworn statement was true and correct. This statement contradicts the applicant's claim on the Form I-687 that he has resided in the United States since November 1981.

It is noted that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status under the Legal Immigration Family Equity (LIFE) Act, on May 10, 2002. The applicant indicated in Part 1 of the Form I-485 that he last entered the United States on August 22, 1985. The applicant indicated on the Form I-485 that he had a son, [REDACTED] born in Bangladesh on June 7, 1982, a daughter, [REDACTED] born in Bangladesh on May 8, 1984, a son, [REDACTED] born in Bangladesh on August 9, 1986, and a daughter, [REDACTED] born in Bangladesh on February 12, 1988, along with two other children born in Bangladesh in 1990 and 1992. The applicant indicated on the Form I-687 that he was in Bangladesh visiting family from July to August 1985 and from September to November 1987. If the applicant had resided continuously in the United States since November 1981 as he indicated on the Form I-687, he could not have fathered children with his wife in Bangladesh in 1982, 1984, 1986, and 1988 as he claimed on the Form I-485. The applicant's claimed dates of absence outside the United States do not appear to coordinate with the birth dates of his children in Bangladesh. He has not provided any explanation for these discrepancies in his claimed dates of residence in the United States and absence outside the United States during the requisite period.

The applicant indicated on a Form G-325A, Biographic Information, submitted in conjunction with his Form I-485 application, that he resided in Moulvibazar, Bangladesh, from January 1957 to August 1985. This statement contradicts his statement on his Form I-687 that he has lived in this country since November 1981. The birth dates of the applicant's children in Bangladesh, considered in conjunction with his previous statements on the Form I-485 and G-325A that he first came to the United States in 1985, support a conclusion that the applicant did not reside continuously in the United States throughout the requisite period.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated December 21, 1992, from [REDACTED] Secretary of the Bangladesh Society, Inc., located at [REDACTED] City, New York. The letter bears the following notation in the upper left corner under the organization letterhead:

[REDACTED] stated that "the above named individual" had been a member of the Bangladesh Society since November 1983.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The affidavit from

██████████ does not conform to this standard. ██████████ did not provide the applicant's addresses in the United States during the membership period. Furthermore, Mr. ██████████ did not refer to the applicant by name in the text of the letter. He merely stated that "the above named individual" had been a member of his organization since 1983. The "above named individual" referred to by ██████████ appears to be the applicant. However, the applicant's name and address have been typed onto the letter in a completely different font from the font used in the text of the letter. This discrepancy raises questions of credibility regarding the credibility of ██████████ testimony.

The applicant also submitted an affidavit from ██████████ stated that "the above named individual is my good friend and long time we are living together." ██████████ further stated, "He entered the United States before January 1, 1982 and has been residing continuously in an unlawful manner until today." However, ██████████ provided no information as to how he met the applicant, the frequency of his contact with the applicant during the requisite period, or the applicant's addresses in the United States during the requisite period. Furthermore, Mr. ██████████ did not provide an address or telephone number at which he could be contacted for the purpose of verifying the information contained in his affidavit. In addition, the applicant's name and address are typed at the upper left corner of this affidavit in a completely different font from the text of the letter. In fact, the applicant's name and address on this affidavit appear to have been typed with the same typewriter that was used to type his name and address on the affidavit from the Bangladesh Society, Inc. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant included an affidavit from ██████████ a resident of Brooklyn, New York. The applicant's name and address are typed on the upper left corner of this affidavit. Mr. ██████████ stated that he had known "the individual" since 1982 and that "the applicant came to the United States before 1982." However, ██████████ provided no information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. Furthermore, the applicant's name and address appear to have been typed onto this affidavit using the same typewriter that was used to type his name and address on the affidavits from the Bangladesh Society, Inc., and from ██████████. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant provided an affidavit dated May 18, 1985 from ██████████ located at ██████████. The letter appears to have been signed by the Secretary and the President of this organization, but the signatures are illegible and the names of these individuals are not printed below the signature. The letter stated that the applicant had been a member of that Islamic Center since November 1982. This affidavit does not conform to the standard for organizations set forth at 8 C.F.R. § 245a.2(d)(3)(v). The two officials who signed the affidavit have not provided their names. Nor have the authors provided the applicant's addresses during the membership period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant submitted an affidavit dated December 21, 1990, from [REDACTED], a resident of Brooklyn, New York. The applicant's name and address are typed onto this affidavit in the upper left corner. [REDACTED] stated that "the above referenced individual is known to me since 1982." However [REDACTED] provided no information as to how he met the applicant, the frequency of his contact with the applicant during the requisite period, or the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also provided an affidavit dated January 7, 1988, from [REDACTED] a resident of Brooklyn, New York. The applicant's name and address are typed in the upper left corner of the affidavit. The affiant stated that "the above referenced individual is my distant relative who entered the United States before January 1, 1982 and he has been residing in the United States in an unlawful manner since that date except for a brief absence." However, the affiant did not provide any specific information as to his exact relationship with the applicant, the frequency of his contact with the applicant during the requisite period, or the applicant's addresses during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also provided an affidavit from [REDACTED] [REDACTED] stated that he lived with the applicant at [REDACTED], New York" from November 1, 1981 to April 30, 1983. However, [REDACTED] provided no information as to how he met the applicant. Furthermore, [REDACTED] did not provide an address or phone number at which he could be contacted for the purpose of verifying the information contained in his affidavit. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant included an affidavit from [REDACTED] a resident of Astoria, New York. Mr. [REDACTED] stated that he had known the applicant since 1983 when he met the applicant at a community social function. However, [REDACTED] provided no information as to the applicant's addresses in the United States during the requisite period or the frequency of his contact with the applicant during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant submitted an employment affidavit dated September 27, 1986, from [REDACTED] located at "[REDACTED] New York." [REDACTED] stated that the applicant worked for his company as a construction helper from November 15, 1981 to August 26, 1983, and was paid \$4.50 per hour in cash.

The applicant submitted an affidavit dated January 15, 2006, from [REDACTED] [REDACTED] stated that he had known the applicant since July of 1982. [REDACTED] explained that he first met the applicant at the [REDACTED] and they later "moved in together as roommates" at "[REDACTED] [REDACTED] provided no information as to the dates he and the applicant roomed together at this address. Furthermore, the applicant did not list this address on his Form I-687. The applicant has not

provided any explanation for this discrepancy in his claimed addresses in the United States during the requisite period.

The applicant included an affidavit dated January 13, 2006, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that the applicant came to the United States in October 1981. [REDACTED] further stated, "[h]e called me upon arrival and I met him on the following day at Astoria, New York." However, [REDACTED] provided no information as to the frequency of his contact with the applicant during the requisite period or the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

On February 1, 2006, the district director informed the applicant of her intention to deny his application because he had not provided sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director specifically noted that the applicant stated in a sworn statement dated January 17, 2006, that he first entered the United States on October 18, 1986. The district director further noted that the applicant indicated on the Form G-325A that he was residing in Bangladesh from his birth on January 1, 1957 to August 1985. The district director stated that these statements contradicted the applicant's claimed date of initial entry into the United States and granted the applicant 30 days to submit additional evidence to overcome these discrepancies. The notice was mailed to the applicant's address of record, but the record does not contain a response from the applicant.

On appeal the applicant states:

At the time of my interview I stated in detail in respect of my eligibility. And I also told that there were some typing mistakes in my documents which were due to inadvertence. At the time of my interview I also told that I had entered the United States before January 01, 1982. My second entry into the United States was 10/18/86. But in Biographic Information that I filed earlier with Form I-485 it was wrongly typed that I had been living in Bangladesh from 01/57 to 08/85. But it would have been typed 01/57 to 10/81. That was due to inadvertence.

The applicant stated under oath during his interview on January 17, 2006, that he first entered the United States on October 18, 1986. He signed a sworn statement at the time of his interview certifying under penalty of perjury that this statement was true and correct to the best of his knowledge. The applicant's sworn statement at the time of his interview that he first entered the United States on October 18, 1986 contradicts his claim on his Form I-687 and on appeal that he entered the United States "prior to January 1, 1982." The applicant cannot attribute this contradiction in his claimed date of entry into the United States to "typing mistakes" on documents.

The applicant signed the G-325A certifying that the information he provided on the form was true and correct to the best of his knowledge. A notation on the Form G-325A states, "Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a

material fact.” It is the applicant’s responsibility to ensure that all information provided on his application and the G-325A is true and correct to the best of his knowledge. “Inadvertence” is not a sufficient explanation for these discrepancies.

Additionally, the applicant’s statement on appeal that his second entry into the United States was on October 18, 1986, contradicts his statement on the Form I-687 that he was outside the United States from July 1985 to August 1985 and from September 1987 to November 1987. The applicant did not list an absence and re-entry into the United States in 1986 on the Form I-687. The applicant has not provided any explanation for this discrepancy in his claimed dates of absence outside the United States.

The numerous contradictions and discrepancies noted above raises serious questions of credibility regarding the applicant’s claim of continuous residence in the United States throughout the requisite period. Doubt cast on any aspect of the applicant’s proof 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, and 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 applicant submits an employment affidavit from [REDACTED] Manager of M & M Construction, NY Inc., located at [REDACTED] states that the applicant worked for his construction company as a part-time construction helper from August 1984 to December 1988 for a salary of \$6.00 per hour. This affidavit does not conform to the employment affidavit standard set forth at 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] does not provide the applicant’s addresses in this country throughout the employment period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also submits an affidavit dated February 6, 1991, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] states that he had known the applicant since December 1982 when they met in a restaurant in Brooklyn, New York “where he used to take his breakfast.” However, [REDACTED] does not provide any information regarding the applicant’s addresses in this country during the requisite period or the frequency of his contact with the applicant during the requisite period to corroborate the applicant’s claim. Therefore, this affidavit will be accorded little evidentiary weight.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period and has submitted various affidavits which contain insufficient relevant and specific verifiable information to corroborate the applicant’s claim.

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 during his interview 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 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.