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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 251 14201

Office: NEW YORK

Date: **AUG 06 2008**

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 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.

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, or *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 denied the application, finding that the applicant had not met his burden of proof to establish, by a preponderance of the evidence, that he had continuously resided in the United States in an unlawful status during the requisite period. The director found that the applicant had not provided any evidence to show that he had resided in the United States for the requisite periods and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the applicant filed an appeal of the denial of his Form I-485, Application to Register Permanent Resident or Adjust Status. Counsel asserts that the denial of his Form I-687 preempts his Form I-485 appeal. Counsel asserts that since the decision to deny permanent resident status is not final, the decision to deny the applicant's temporary resident status is premature. Counsel requests that the AAO remand the applicant's Form I-687 to await a decision on his Form I-485. The AAO will adjudicate the appeal of the denial of the applicant's Form I-485 in a separate decision.

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 and is otherwise eligible for adjustment of status under this section. 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.12(e).

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). 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.2(d)(6).

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 or 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment should be on employer letterhead stationary, if the employer has such stationary, and 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 record reflects that on June 8, 2005, the applicant filed a Form I-687, Application for Status as a Temporary Resident. On October 18, 2005, the applicant appeared for an interview based on his application.

On January 24, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to submit credible evidence that would constitute a preponderance of the evidence as to his residence in the United States during the period required under the LIFE Act. The director also noted that the only evidence the applicant submitted of having resided continuously in the United States were affidavits from Sayed [REDACTED]

[REDACTED] The director stated that the affidavits did not include identification, any proof that the affiants were in the United States during the statutory period, or proof of direct personal knowledge of the events being attested to. The director also noted that the same individual, [REDACTED], who attested to the applicant’s employment from December 1981, to November 1985 also submitted a separate affidavit attesting to having resided with the applicant from January 1985 to October 1990. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, counsel and the applicant submitted statements and previously submitted documentation. The applicant stated that he wanted to clarify several findings regarding the individuals who filed affidavits on his behalf. He stated that three of the affiants, [REDACTED] had been citizens for a long time. He stated that [REDACTED] and he shared an apartment from November 1981 to December 1984 and that he also worked with [REDACTED] for five years at STS Drug Store. He provided Mr. [REDACTED]'s telephone number, and stated that [REDACTED] knew him from November 1981 to 1991. He stated that He and [REDACTED] were members of the same cultural organizations since December 1981 and that he does not know [REDACTED]'s immigration status. He states that he and [REDACTED] were born in the same city in Bangladesh, their fathers worked at the same place, and that they were neighbors in Bangladesh. He states that Mr. [REDACTED] came to the United States in about 1974/75. He states that when he first arrived in the United States in November 1981, [REDACTED] helped him by providing him a job where he worked (the Reise Organization) and that they lived together from January 1985 to October 1990.

On July 25, 2006, the director denied the application, finding that the response to the NOID did not overcome the issues mentioned in the NOID.

On appeal, counsel asserts that the applicant filed an appeal of the denial of his Form I-485, Application to Register Permanent Resident or Adjust Status. Counsel asserts that the denial of his Form I-687 preempts his Form I-485 appeal. Counsel asserts that since the decision to deny permanent resident status is not final, the decision to deny the applicant's temporary resident status is premature. Counsel requests that the AAO remand the applicant's Form I-687 to await a decision on his Form I-485.

Counsel appears to be confusing adjustment of status under the LIFE Act, which is filed on a Form I-485, and Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603), which is submitted only after a Form I-687 is approved. These two forms are similar but unrelated. The denial of the applicant's Form I-687 does not preempt the appeal of the denial of his Form I-485. The AAO adjudicated the appeal of the denial of the applicant's Form I-485 in a separate decision.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period.

The following evidence relates to the requisite period:

Employment Letters

A letter dated February 9, 1991, from [REDACTED] general manager of Houlihans's Restaurant on [REDACTED] states that the applicant worked for the restaurant from December 1981, to November 1985, as a bus boy, setting up and cleaning tables, and being a

general assistant in the kitchen. [REDACTED] attests that the applicant was paid in cash as he did not have a Social Security number;

- A letter dated simply December 16, (without an indication of the year) from [REDACTED] president of STS Drugs, Inc. [REDACTED] states that the applicant worked as a sales person in his store from January 1985, to October 1990. He states that the applicant's salary ranged from \$3.35 to \$5.00 per hour and that he was paid in cash as he did not have a Social Security number.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employers failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare which records their information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter from [REDACTED] listed his position but did not list the applicant's duties.

Letters and Affidavits

- Two undated letters from [REDACTED], the applicant's former roommate and employer. [REDACTED] states that the applicant lived with him from November 1981, to December 1984. [REDACTED] states that the applicant shared monthly rent and other utility bills during the time he lived with him. He states that in January 1985, the applicant moved in with other friends and that he now lives in Florida. He states that the applicant always keeps in contact with the applicant over the phone. The letters contain no details regarding any relationship with the applicant during the requisite period and fail to state when or where the affiant and the applicant met. In both letters, [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his address and the fact that he contributed towards monthly expenses. In addition, there is no evidence that [REDACTED] resided in the United States during the requisite period;
- A letter from [REDACTED] states that the applicant lived with him from January 1985, to October 1990. He states that the applicant shared the rent and other requisite bills on a monthly basis during the period he lived with him. Again, the letter contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiant and the applicant met. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his address and the fact that he contributed towards monthly expenses. In addition, there is no evidence that Mr. [REDACTED] resided in the United States during the stated period;

- A letter dated February 11, 1991, from [REDACTED] states that the applicant is well known to him for the past ten years. He states that the applicant visited him in November 1981, while he was in Rochester, New York. He states that the applicant went to see him at his home several other times. [REDACTED] does not provide any details about his relationship with the applicant over a period of ten years. He does not describe how they met or how often they spoke or saw each other during those ten years. He has not submitted any documentation to establish that he resided in the United States during the requisite period. Furthermore, he provides no details or knowledge of the applicant's continuous residence and physical presence in November 1981 or during the times that he visited him again at his home;
- A letter dated February 15, 1991, from [REDACTED] Mr. [REDACTED] states that he applicant is well known to him since he arrived in the United States in November 1985. He states that during the previous five years in New York the applicant was very close to him and was often a visitor with his friends in his home. Again, [REDACTED] provides no details about his relationship with the applicant over a period of five years. He does not describe how they met or how often they spoke or saw each other during those years. He has not submitted any documentation to establish that he resided in the United States during the stated time period. Furthermore, he gives no indication about where the applicant lived from November 1985 to February 1991 or during the times that he visited him at his home;
- An "Affidavit of Witness" form dated February 14, 1991. The form, signed by [REDACTED] lists the applicant's addresses in New York from November 1981 through October 1990, and is consistent with information on the applicant's Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the addresses listed. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [REDACTED] did not add anything in this blank. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiants and the applicant met. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than his addresses. In addition, there is no evidence that the affiant resided in the United States during the requisite period;
- An affidavit form dated February 14, 1991. The form, signed by [REDACTED] allows the affiant to fill in statements about how and where he or she first

met the alien, how often and under what circumstances he or she sees the applicant, each month and year he or she has seen the applicant, and, what activities, if any, they do together. [REDACTED] states that he met the applicant at the house of one of his dearest friends, where the applicant started to live. He states that he saw the applicant whenever he visited his friend. He states that he saw the applicant at his workplace, STS Drugs as well. He states that he saw the applicant 2-3 times per month until October 1990, when the applicant moved to Florida. He states that he saw the applicant at various meetings, cultural, religious, and community programs, and social gatherings. [REDACTED] does not list the applicant's addresses during this time period. He also fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence from prior to January 1, 1982, to November 1985, when he first met him. Furthermore, there is no evidence that [REDACTED] resided in the United States during the stated time period; and,

- A letter dated February 4, 1991, signed by [REDACTED] on letterhead stationary of the Bangladesh Cultural Center. [REDACTED] states that he has known the applicant since December 1981. He states that the applicant came to his house one month after his arrival in the United States. He states that during this 10 year period, the applicant was very close to him and visited his home several times. He states that the applicant is an associate member of the Cultural Center. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his continuous residence and continuous physical presence during the requisite periods. Furthermore, there is no evidence that [REDACTED] resided in the United States during the stated time period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period. None of the affiants indicated how they recalled specifically when they first met the applicant.

The record of proceedings contains various other documents, including tax documentation from the years 2001 to 2004 and a certificate of participation from the Bangladesh Cricket Association of New York dated August 14, 1994. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on June 18, 1983, and to have resided for the duration of the requisite period in New York and Florida. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. The applicant has not overcome the particular basis of denial cited by the director and is ineligible for temporary permanent resident status.

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