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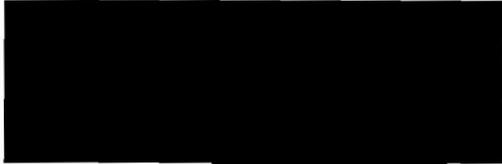
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-04-260-10663

Office: NEW YORK

Date: DEC 17 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director, New York. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the only evidence submitted by the applicant to establish residency in the United States for the requisite period of time consisted of affidavits that were neither credible nor amenable to verification. Furthermore, the director noted that the applicant's departure from the United States from August 18, 1984 to October 20, 1984 exceeded the 45 day break in residency permitted by the terms of the settlement agreements. Thus, the director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant represents himself on appeal. He asserts that he has established his unlawful residence for the requisite time period. He also claims that his departures from the United States were limited to two occasions, neither of which exceeded 45 days: May, 1984 to July, 1984 and August, 1987 to August, 1987.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

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 period, is admissible to the United States under the

provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

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.* at 80. 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, 431 (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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship from two friends, the applicant's own affidavit, and a copy of his passport. The AAO has reviewed each document in its entirety, as well as all of the documents of record, to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Initially, the AAO notes that the applicant indicated on the Form G325A – Biographic Information that he lived in Dhaka until July, 1984. This information is inconsistent with the applicant's attestation that he entered the United States prior to January 1, 1982.

The affidavits from [REDACTED] and [REDACTED] contain statements that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during the required period. **These affidavits fail,**

however, to establish the applicant's continuous unlawful residence in the United States for 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; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship; have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Furthermore, the information contained in the applicant's Form I-687 regarding residence conflicts with the affiants' attestations on this issue. For example, [REDACTED] attests that the applicant resided with him in October and November, 1981, yet [REDACTED] lists his address as [REDACTED] Astoria, New York, and there is no evidence that Mr. [REDACTED] resided at any other address at any point in time. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The noted contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. The attestation provided by the applicant dated February 24, 2006 does not address this inconsistency, and therefore shall be afforded little weight.

The final item of evidence submitted in support of the application for temporary residence is a photocopy of the applicant's passport. The AAO notes that the passport does not establish when or where the applicant first entered the United States, it does not indicate the dates of departures and returns to the United States, and it appears to be a replacement passport issued by the New York Consulate General of Bangladesh on November 4, 2001. Therefore, this evidence does not establish the applicant's entry or residence in the United States for the requisite period of time.

The AAO observes that the record contains notes from the applicant's interview conducted on May 26, 2005. The notes reveal that the applicant stated to a USCIS district adjudications officer that he traveled to Canada on two occasions: on May 11, 1984, returning to the United States on

July 12, 1984, and again from August 5, 1987 to August 22, 1987. The 1984 absence from the United States is well in excess of the maximum 45 day limit. The applicant denies this departure in his affidavit dated February 24, 2006. However, the applicant submits no evidence to establish his presence in the United States for that period of time.

Furthermore, the applicant admitted to a departure from the United States to Bangladesh on August 18, 1984, with a return on October 20, 1984. Again, this absence exceeds the 45 day limit for individual departures under the terms of the settlement agreements. These absences conflict with the absence listed on an earlier Form I-687 contained in the file and remain unexplained on appeal. *Matter of Ho, id.* 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." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being." There is no evidence in the record to suggest that the applicant traveled to Bangladesh with the intent of returning within the 45 day time limit, but was prevented from making a timely return to the United States because of an unexpected emergency.

The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.<sup>1</sup>

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

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<sup>1</sup> The AAO notes that evidence in the record suggests that the applicant was arrested by the Fairfax County, Virginia police on December 18, 1999, and charged with *Fraudulent Use of Birth Certificate/Driver's License.*, in violation of Virginia Criminal Code sections 18.2-204.1 and 204.2 (Docket # [REDACTED]). On January 19, 2000, the applicant was convicted of *Unlawful Name Change*, and fined \$500. This single misdemeanor conviction does not render the applicant ineligible for temporary resident status pursuant to 8 C.F.R. § 245a.2(c)(1).