



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-237-16068

Office: NEW YORK

Date: FEB 29 2008

IN RE: Applicant: [REDACTED]

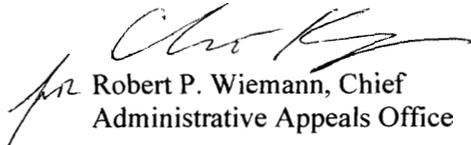
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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. 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. 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.

On appeal, the applicant furnishes documentary evidence to corroborate his residence in the United States during the requisite period.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on May 25, 2005. The applicant signed his application under penalty of perjury, certifying that the information contained in the application is true and correct. At part #30 of this application, the applicant showed that he resided in Astoria, New York from June 1981 until July 1986; Woodside, New York from August 1986 until August 1994; and Holtsville, New York from September 1994 to present. At part #32, the applicant showed that he has had one absence from the United States, during his travel to Canada from June 1987 until August 1987. At part #33, the applicant showed that his only employment as self-employed in “daily labor.”

Notably, the applicant’s Form I-687 is inconsistent with documentation in his record. The applicant’s record contains a Form I-140, Immigrant Petition for Alien Worker, which he concurrently filed with his Form I-485, Application to Adjust Status. The applicant submitted with his Form I-485 a copy of his expired passport and Form I-94. The applicant’s expired passport shows that he received the passport in Dhaka, Bangladesh on March 5, 1989. This passport shows numerous entry stamps indicating the applicant’s arrival and departure from Bangladesh. Furthermore, the passport contains a United States B-2 visitor visa, issued in

Dhaka, Bangladesh on August 2, 1993, with a blurred arrival stamp indicating the applicant's arrival into New York as a B2 visitor. The passport also contains a second United States B-2 visitor visa, issued in Dhaka, Bangladesh on March 20, 1995. The applicant's Form I-94 shows his entry into the United States as a B-2 visitor on May 16, 1995. This information is inconsistent with the applicant's Form I-687, which shows that since his June 1981 entry, he had only one departure from the United States for two months to Canada in June 1987.

Additionally, the applicant's Form I-687 provides his only employment as "self employed as door to door daily basis labor." This information is also inconsistent with the applicant's record. The applicant's record contains a Form ETA 750, Application for Alien Employment Certification, dated April 25, 2001. The applicant's Form ETA 750 indicates that the applicant has been employed with Micro Systems International since April 1998 in the positions of programmer analyst and computer programmer. Moreover, the applicant submitted with his Form I-140 petition employer letters. The applicant submitted a letter from [REDACTED] Vice President, Cimple Systems, dated July 8, 1999, which states that he had been employed with the company as a computer programmer since 1998. The applicant also submitted a letter from [REDACTED] Associate Technical Specialist, Interim Technology, stating that he was employed as a help desk agent at their IBM site from July 1998 until February 1999.

Furthermore, the petitioner of the applicant's Form I-140 petition is Micro Systems International through its president, [REDACTED]. The applicant submitted with his Form I-687 application an affidavit from [REDACTED] which provides, "[t]his is to certify that [REDACTED] son of [REDACTED] and [REDACTED] . . . has been a friend of mine from 1981 to currently." [REDACTED] fails to state in his affidavit that the applicant, who is purportedly a day laborer, is employed with his company, Micro Systems International. Moreover, the applicant, whose date of birth is August 22, 1976, would have been five years old in 1981. It is unclear how the applicant could have met [REDACTED] in 1981 since the applicant testified that he was home schooled as a child.

Finally, the applicant has submitted an affidavit from [REDACTED] which states, "I know [the applicant] from December/80. He was acquainted to me [sic] in a restaurant in Jackson Heights where he worked as a kitchen helper . . . The alien was working in a restaurant in Jackson Heights where I used to go twice or thrice in a week for lunch or break fast [sic] and used to talk to him on friendly terms." The applicant's Form I-687 indicates that he first entered the United States in June 1981, when he was four years old. Therefore, it would have been implausible for the applicant to be working in a restaurant as a kitchen helper in 1980. Moreover, the applicant's Form I-687 does not contain any information on his employment in a restaurant as a kitchen helper.

The numerous inconsistencies in the applicant's record draw into question the overall credibility of his claim for temporary resident status. 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 his application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon 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, in fact, lies, will not suffice. *Id.*

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted his own sworn statement regarding his class membership under the CSS Settlement Agreement and a completed form for determination of class membership in *CSS v. Thornburgh*. These documents are not probative evidence of the applicant's residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony.

The applicant also submitted the following documents to corroborate his residence in the United States during the requisite period:

- Copies of the applicant's college diplomas from the Suffolk County Community College and the College at Old Westbury, State University of New York. On May 31, 1998, the applicant received a degree of Associate in Science from the Suffolk County Community College. On December 20, 1999, the applicant received a degree of Bachelor of Science from the College at Old Westbury.
- An affidavit from [REDACTED] which provides that she has known the applicant since 1982. [REDACTED] states, "I met [the applicant] first with his parents in a Social Function held in Brooklyn, NY, we shared the same rented house at Astoria, New York, went for shopping, shared cultural activities and discuss [sic] on different matters and affairs." This affidavit provides some general information on the affiant's contact with the applicant. However, it lacks considerable detail on her contact with the applicant during the requisite period. Therefore, this affidavit is of minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], which provides, "[t]his is to certify that [REDACTED] whose name and address are stated above is well known to me for a long time." There is no indication in this affidavit of when [REDACTED] first met the applicant. Therefore, this affidavit has no weight as probative evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] which provides, [REDACTED] with his parents is [sic] well known to me since his first entrance into the United States in the month of June/81." This affidavit fails to explain how [REDACTED] first met the applicant. It also fails to illustrate his contact with the applicant during the requisite period. Therefore, this affidavit has no weight as probative evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] which provides that she has known the applicant since 1981. [REDACTED] states, “[the applicant] entered the United States with his parents before January 01, 1982 and has been residing continuously in an unlawful manner except for an innocent short absence for which reason his legalization application and application fee was not accepted and turned away by INS.” This affidavit fails to explain how [REDACTED] first met the applicant. It also fails to illustrate her contact with the applicant during the requisite period. Therefore, this affidavit has no weight as probative evidence of the applicant’s residence in the United States during the requisite period.

On March 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The director asserted that the authors of the affidavits do not have direct personal knowledge of the events and circumstances related to the applicant’s residency. The director noted that the applicant testified he was home schooled by his family in the United States. The director requested the applicant to present evidence of the validity of such schooling. The director noted that the university the applicant attended would have required evidence of his high school equivalence. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.

In response to the NOID, the applicant submitted the following documents:

- An affidavit form [REDACTED] which states “I have known Omor in excess of twenty years, having first met him in the fall of 1986 when our parents introduced us at a soccer game . . . Since 1986, [REDACTED] has remained in the United States, save for a one-month visit with relatives in Canada in or around 1987/88.” [REDACTED] claims that the applicant has had only one absence from the United States. However, the applicant’s record shows that he has been in Bangladesh on at least three occasions. The applicant received his passport in Dhaka on March 5, 1989 and his B-2 visas in Dhaka on August 2, 1993 and March 20, 1995, respectively. This omission draws into question the overall credibility of the affidavit.
- An affidavit from [REDACTED] which provides, “[t]his is to certify that [REDACTED] son of [REDACTED] and [REDACTED] whose name and addresses are stated above was introduced to me in 1981 when I met his parents.” [REDACTED] further states that he guided and monitored the applicant’s progress in home schooling. This affidavit lacks any detail on the affiant’s first meeting with the applicant’s parents. Furthermore, this affidavit fails to detail the affiant’s expertise in educational instruction. Therefore, this affidavit is of minimal weight as probative evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] discussed above. This affidavit provides, “[t]his is to certify that [REDACTED] . . . has been a friend of mine from 1981 to currently. He has lived in the United States with his parents and was being home schooled.” As noted,

fails to explain in his affidavit how he first met the applicant, who was five years old in 1981 and home schooled. Furthermore, this affidavit fails to detail the affiant's direct personal knowledge of the applicant's residency in the United States since 1981. Therefore, this affidavit has no weight as probative evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] which provides, "[m]y parents have known [the applicant's] parents since 1984 when they first came to the United States. I have known him since that time as we lived in the same community. My father and [REDACTED]'s father have worked together." Although this affidavit provides some evidence of [REDACTED]'s relationship with the applicant, it is still vague. The affiant does not define the community he claims to have lived in with the applicant. The affiant provides that his father worked with the applicant's father. However, there is no mention of their place of employment. Therefore, this affidavit is of minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] Principal of Badda Alatunnessa Higher Secondary School, located in Dhaka, Bangladesh. This affidavit provides, "[the applicant] was a student of mine from 1981 to 1993. He was living overseas in the United States with his parents and was being home schooled while following our curriculum." The applicant submitted with this affidavit, copies of his higher secondary certificate examination marks certificate (transcript) from June 1993 with a certification that he passed the higher secondary certificate examination. The Board of Intermediate and Secondary Education, Dhaka, Bangladesh issued these documents. The marks certificate indicates that the applicant was tested in Physics, Chemistry and Biology. It is unclear how the applicant could have been home schooled in Chemistry and Biology, since there is usually a lab component to these subjects. Additionally, the marks certificate indicates that the applicant appeared at the examination site in Bangladesh. This information is inconsistent with the applicant's Form I-687, which shows that since his June 1981 entry, he had only one departure from the United States for two months to Canada in June 1987.

In denying the application, the director noted that the applicant's response failed to address the issues regarding the previously submitted affidavits. The director determined that the documents submitted in response to the NOID were not credible. The director noted, in part, that the additional affidavits failed to provide the affiants' direct personal knowledge of the events and circumstances related to the applicant's residency. The director found that four of the five affidavits submitted in response to the NOID were notarized by [REDACTED] who is not a licensed Notary Public in the State of New York. The director also determined that the documents regarding the applicant's secondary school education were not stamped, sealed or certified by an official of the school or the Board of Intermediate and Secondary Education, Dhaka. The director concluded that the applicant had not met his burden of proof and denied the application.

On appeal, the applicant resubmitted the same affidavit from [REDACTED] which is notarized by another notary public. The applicant submitted a second affidavit from [REDACTED] which is also notarized by another notary public. In addition to [REDACTED]'s previous statement, this affidavit provides, "[s]ince graduation from college, [REDACTED] has worked for one company and steadily moved up the corporate ladder. He has also married, purchased a home, and made many, many close friends. Simply stated, [REDACTED] has lived the American dream to its fullest." The additional information in this affidavit fails to show the affiant's direct personal knowledge of the circumstances related to the applicant's residence in the United States during the requisite period.

Lastly, the applicant resubmitted the affidavit from [REDACTED], Principal of Badda Alatunnessa Higher Secondary School and the copies of his 1993 higher secondary certificate examination marks certificate (transcript) with a certification that he passed the higher secondary certificate examination. The applicant also submitted copies of his 1991 secondary school certificate examination marks certificate (transcript) with a certification that he passed the secondary school certificate examination. These documents are each stamped "attested" by Najmul Huda, Deputy Controller of Examinations Board of Intermediate & Secondary Education. The applicant's marks certificates, respectively dated June 1993 and May 1991, indicate that he appeared for his examinations on those dates in Bangladesh. As noted, this is inconsistent with the applicant's Form I-687, which shows that since his June 1981 entry, he had only one departure from the United States for two months to Canada in June 1987. Moreover, the applicant's May 1991 marks certificate indicates that he attended the Adamjee Cantonment College in Dhaka and the applicant's June 1993 marks certificate indicates that he attended the B.A.F. Shaheen College in Dhaka. This is inconsistent with the affidavit from [REDACTED] which states that the applicant was home schooled in the United States under the tutelage of Badda Alatunnessa Higher Secondary School from 1981 to 1993.

In summary, the applicant has not established his eligibility for temporary resident status under Section 245A of the Act. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The application of the "preponderance of the evidence" standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M*, 20 I&N Dec. 77, 80. When viewed by itself, the relevant evidence in the applicant's record is at best of minimal probative value. When viewed within the totality of the evidence, these documents do not establish that the applicant's claim is probably true. The applicant's record contains several documents that are notably inconsistent with his instant application. The applicant's submission of inconsistent documentation draws into question the overall credibility of his evidence. Pursuant to *Matter of Ho, supra*, the applicant has failed to resolve these inconsistencies with independent objective evidence. Consequently, the applicant has failed to satisfy his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status 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-, 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.