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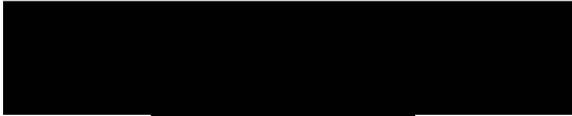
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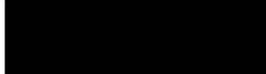
U.S. Citizenship  
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Services

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FILE:



Office: NEW YORK

Date: JAN 24 2008

MSC 05 187 12208

IN RE:

Applicant:



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 read "R. 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. 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, on April 5, 2005. 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 as 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 states that the district director should have been sympathetic to his "helpless situation" and approved his application. He states that he timely filed a response to the director's notice of intent to deny, and explained in detail the circumstances of his entry to the United States during his interview with a Citizenship and Immigration Services (CIS) officer. The applicant submits a short statement, but no new evidence, in support of the appeal.

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 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).

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 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 April 5, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed that he continuously resided at [REDACTED], in Brooklyn, New York, from September 1980 until June 1989. At part #33 of the applicant's Form I-687, where he was asked to list all of his employment in the United States since he first entered, he stated that he was "self employed" as a day laborer since October 1980.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted an affidavit in support of his application. He stated that he originally entered the United States on September 12, 1980 without inspection and remained in the United States continuously in an unlawful status for the duration of the requisite period. He further stated that he left the United States on one occasion to visit friends in Canada and was absent from May 28, 1987 until July 9, 1987, when he returned without inspection.

The applicant submitted the following evidence in support of his application:

- An affidavit from [REDACTED] executed on January 30, 2005. [REDACTED] states that she has known the applicant since November 1980, when she met him while he was working as a busboy at a restaurant in Jackson Heights, New York. She states that since that time "he always used to call me and told about his efforts and endeavor in his legalization matter." [REDACTED] lists the applicant's addresses of residence from September 1980 until the present time.
- An affidavit from [REDACTED], who states that he has known the applicant since 1980, and that the applicant has been living continuously in the United States in an unlawful manner except for a brief absence. [REDACTED] states that the applicant made several attempts to file a legalization application during the initial application period.
- A notarized letter from [REDACTED], who certifies that he has known the applicant since 1980 and has been associated with him "on friendly terms" through 1988. The letter is dated February 1, 1988, but appears to have been notarized on February 5, 1992.
- A notarized letter from [REDACTED], who states that he has known the applicant since 1980. [REDACTED] states that the applicant has been continuously residing in the United States in an unlawful status except for a brief absence. He states that he has personal knowledge that the applicant was turned away when he attempted to file a legalization application because he had traveled outside the United States.
- A notarized letter from [REDACTED] who stated that he has known the applicant since January 1981 and that the applicant has resided continuously in the United States except for a short absence. He states that he has personal knowledge about the applicant's attempt to file a legalization application during the original amnesty period.
- A notarized letter from [REDACTED], which, notably, is dated December 1, 2004, yet appears to have been notarized on September 9, 2004. [REDACTED] states that the applicant entered the United States on September 12, 1980 and has since resided in the United States in an unlawful manner except for one absence. He states that he has personal knowledge of the applicant's attempts to file a legalization application during the original legalization application period.

- An affidavit from [REDACTED], who states that he has known the applicant since 1980. He states that he has personal knowledge that the applicant went to Canada to visit friends on May 28, 1987 and returned to the United States on July 9, 1987.
- A notarized letter from [REDACTED] who states that the applicant is well known to him since 1981. He states that the applicant worked for him from 1983 until 1988. He also states that the applicant has continuously resided in the United States since before January 1, 1981, except for one brief absence, and that he has personal knowledge of the applicant's attempts to apply for legalization.
- A notarized letter from [REDACTED] dated February 1990, who states that he met the applicant in December 1980 at a restaurant in Jackson Heights, New York. [REDACTED] states that the applicant was employed as a kitchen helper and that he himself was a customer in the restaurant two or three times per week.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain, in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). In addition, affidavits must be both credible and amenable to verification.

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. None of the letters and affidavits submitted in support of the application meet the regulatory guidelines. Out of ten affidavits, only two affiants, [REDACTED] and [REDACTED], provide any information at all regarding the basis of their acquaintance with the applicant. However, in the case of these two affidavits, the affiants did not clearly explain how they came to have personal knowledge of the applicant's residences in the United States, given that both affiants claim to have met the applicant as occasional customers of an unidentified restaurant where the applicant does not claim to have worked. Their association with the applicant, based on the minimal information provided in these affidavits, is tenuous. The majority of the remaining eight affiants simply state, in a conclusory manner, that they have known the applicant since 1980 or 1981 and have personal knowledge of his residence in the United States. None of the affiants provides any details regarding the nature of their relationship with the applicant, the frequency and circumstances of their contacts with the applicant during the requisite period, the events and circumstances surrounding the applicant's residence in the United States, the specific address or addresses at which the applicant

resided, or any other details that would lend credibility to their claims of having "personal knowledge" of the applicant's life in the United States over a period of 10 to 25 years. None of the affiants provided a contact telephone number at which they could be reached for verification, nor did they provide any proof of their relationship with the applicant, any proof that they themselves were in the United States during the requisite period, or any identifying documents.

The applicant also submitted a notarized letter dated May 10, 2001 from [REDACTED] of [REDACTED] General Construction Company in Brooklyn, New York, who states that the applicant worked for his company as a part-time construction worker from August 1982 until October 1987. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary, and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. 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 employment letter from [REDACTED] Construction Company falls significantly short of meeting the requirements for employment letters set forth in the regulations. Furthermore, if the applicant was in fact employed by this company, even on a part-time basis, over a five-year period, it is unclear why this employment was not indicated on his Form I-687, where the applicant indicated that he was self-employed as a day laborer since his arrival to the United States. For these reasons, the letter from Mr. Hoque has minimal probative value.

Finally, the applicant submitted a letter dated December 13, 1991 from the Consulate General of Bangladesh located in New York, New York. The letter certifies the applicant's name, date and place of birth, and the names of his parents. It further states that the applicant was issued a passport in New York on June 14, 1985. While this evidence establishes that the applicant was in New York in June 1985, it is insufficient to establish that he continuously resided in the United States for the duration of the requisite period.

The applicant was interviewed under oath by a CIS officer on November 16, 2005, but submitted no additional documentary evidence at that time. During his interview, the applicant stated that he performed "daily labor and construction" work during the requisite period. He stated that he was married in New York in 1988 and has a daughter who was born in Bangladesh in 1989.

On January 27, 2006, the district director issued a notice of intent to deny the application. The director advised the applicant that the affidavits submitted were neither credible, amenable to verification, nor corroborated by any other evidence in the record. The director noted that there was no proof that any of the affiants had direct personal knowledge of the events and circumstances of his entry and residence, or proof that the affiants were in fact present in the United States during the requisite period.

In response to the Notice of Intent to Deny, the applicant submitted a letter dated February 21, 2006, in which he stated that "all the affiants were present in the United States during the statutory period and they had direct personal knowledge of the events and circumstances of my entry and residence in the United States." The applicant offered no additional corroborating evidence and did not otherwise address the deficiencies discussed in the notice of intent to deny.

The director denied the application on June 28, 2006. In denying the application, the director determined that the applicant failed to submit credible documents which would demonstrate by a preponderance of the evidence his residence in the United States during the statutory period. The director concluded that the applicant had failed to overcome the reasons detailed in the notice of intent to deny.

The director also determined that the beneficiary's absence from the United States from May 28, 1987 until July 9, 1987 constituted a break in his continuous residence and physical presence.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i). Here, the applicant's only acknowledged absence from the United States did not exceed 45 days, thus the director's determination was incorrect and will be withdrawn. Further, the director's application of a strict 30-day limit on travel outside the United States after November 6, 1986 is not consistent with current interpretations of the term "brief, casual and innocent." Accordingly, the director's determination that the applicant did not meet the physical presence requirement will also be withdrawn. Regardless, since the beneficiary did not establish his residence in the United States for the duration of the requisite period, it is not necessary to determine whether he meets the physical presence requirements set forth at 8 C.F.R. § 245a.2(b)(1).<sup>1</sup>

On appeal, the applicant simply reiterates that "the affiants were present in the United States during the statutory period and they had direct personal knowledge of the events and circumstances of my entry and residence in the United States." The beneficiary's unsupported statement does not cure the myriad deficiencies of the affidavits and letters submitted in support of this application. As discussed above,

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<sup>1</sup> It is noted, however, that the applicant has altered his testimony regarding the purpose of his visit to Canada. He stated on his application that he went to Canada to visit friends, and reiterated this statement during his interview. He later stated that he went to Canada for emergent reasons to care for a friend who was in critical condition with heart disease and related serious complications. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

there is nothing in any of the affidavits to suggest that the affiants have a bona fide relationship with the applicant or any personal knowledge of the events and circumstances of his residence in the United States during the requisite period. The applicant was specifically notified of these deficiencies and has offered nothing other than his own assertions in rebuttal.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. While he has submitted ten attestations from affiants concerning that period, none of them are credible, probative or amenable to verification. As such, he cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant’s burden of proof.

The absence of sufficiently detailed 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 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.