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FILE:

MSC-04-309-19523

Office: NEW YORK

Date: JUL 14 2008

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. 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 remanded for further action, you will be contacted.

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. Specifically, the director noted that the applicant testified that he had an absence that exceeded 45 days that occurred during the requisite period. He did not submit sufficient evidence to prove that his return from this absence was delayed due to an emergent situation that came suddenly into being. The director also stated that the affidavit from [REDACTED] stated that the applicant attempted to file for legalization pursuant to the CSS Settlement Agreement in 1981. As the CSS Settlement Agreement had not yet occurred in 1981, the director found this evidence not to be credible. The director went on to say that the applicant failed to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that typographical and clerical errors in evidence that he submitted caused him to fail to meet his burden of proof. He submits updated affidavits from previous affiants and a photocopy of his brother's death certificate in support of his application.

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) 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.

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

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."

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 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, 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 or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 5, 2004. 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 his addresses in the United States during the requisite period to be: [REDACTED] in Brooklyn, New York from December 1981 until September 1985; [REDACTED] in Pompano Beach, Florida from October 1985 until February 1986; and [REDACTED] in Flushing, New York from June 1986 until December 1995. It is noted that the applicant did not indicate an address of residence for March to May of 1986 on his Form I-687 application. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from April to June in 1986 when he went to Bangladesh to visit family. It is noted that he did not show any other absences from the United States during or subsequent to the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period as follows: a self-employed street vendor in Manhattan from April 1982 until November 1983; a delivery boy at Blimpy Fast in Manhattan from December 1983 until August 1985; as a laborer for C.H. Hendrix Farms in Pompano Beach, Florida from October 1985 until February 1986; and as a laborer at Dewan Construction Company in Brooklyn, New York from August 1986 until the date he submitted his Form I-687.

Also in the record is a photocopy of a Form I-687 that is dated April 29, 1988. At part #32 of this Form I-687, where the applicant was asked to list the names of all of his brothers and sisters, the applicant did not list any brothers or sisters. At part #35 of this Form I-687 application where the applicant was asked to list all of his absence from the United States, he indicated that he was absent from the United States from March to May of 1986 when he went to Bangladesh to visit his family. It is noted these dates are not consistent with what he indicated on his subsequently filed Form I-687. Because the applicant has not listed the dates associated with this absence consistently, doubt is cast on whether he has accurately represented the dates of this absence to Citizenship and Immigration Services (CIS).

In the record is a Form for Determination of Class Membership that was signed by the applicant on May 10, 1993. On this form, the applicant indicated that he was absent from the United States from April 3, 1986 until June 7, 1986. The applicant indicated on this form that the purpose of this trip was to travel to Bangladesh to visit family. It is noted that this constitutes an absence of 65 days.

Further in the record is a G-325A Biographic Information Form submitted with the applicant's Form I-485 Application to Register for Permanent Resident or Adjust Status. The applicant signed this Form G-325 on March 7, 2002. On it, the applicant indicated that he had resided on

in Beanibaza, Sylet, Bangladesh from May, 1967 until June 1986. Therefore, the applicant has indicated that he could not have resided in the United States before June 1986. He further indicated on this form that he was married on March 5, 2001 to [REDACTED] in Bangladesh. This indicates that the applicant was absent from the United States in March 2001 when he went to Bangladesh to get married.

The applicant has not consistently represented his residence in or absences from the United States in forms he has submitted to CIS. This casts doubt on the credibility of the applicant's assertion that he resided continuously in the United States for the duration of the requisite period and on his assertion on his Form I-687 that he has not been absent from the United States after 1986.

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 application. 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. 582, 591-92 (BIA 1988).

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 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 applicant initially submitted the following evidence that he resided continuously in the United States during the requisite period:

1. An affidavit from the applicant that was notarized July 14, 2004. In this affidavit, the applicant states that he first entered the United States on December 10, 1981 and remained in the United States with one absence that occurred from April 3, 1986 until June 7, 1986, which constitutes an absence of 65 days. He further states that he has not been absent from the United States for more than 45 days. It is noted that this statement is contradictory to the applicant's assertion that he was absent for 65 days in 1986.
2. An affidavit from [REDACTED] that was notarized on April 29, 1991. The affiant states that the applicant resided with him in Flushing, New York from June 1986 until he signed his affidavit. Though the affiant states that the applicant resided with him, he did not state whether there were periods of time from June 1986 until the end of the requisite period when he did not see the applicant. The affiant failed to indicate when and where he first met the applicant and whether he first met him in the United States. Because this affidavit is lacking in detail, it can only be accorded minimal weight as proof that the applicant resided in the United States from June 1986 until the end of the requisite period.
3. An affidavit from [REDACTED] that was notarized on July 29, 2004. The affiant states that he met the applicant in New York in 1981. He goes on to say that in April 1988 he went with the applicant to an immigration office where the applicant attempted to file for legalization but was turned away. Because the affiant does not state that he knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that he did so.
4. An affidavit from [REDACTED] who indicates he is the Imam of the Madina Masjid. This affidavit was notarized on an unknown date and is dated July 15, 2004. The affiant states that he has been the Imam of the Madina Masjid Mosque since 1987 and that he has seen the applicant attending the mosque "every now and then." However, he does not state when he has seen the applicant attending the mosque. Therefore, it is not clear whether the affiant saw the applicant attending the mosque during the requisite period. Because of this, this affidavit carries no weight as evidence that the applicant resided in the United States during the requisite period.
5. An affidavit from [REDACTED] that was notarized on July 27, 2004. The affiant states that he has known the applicant since 1986. However, he does not state where he met the applicant or whether he first met him in the United States. He goes on to say that on April 29, 1988 he went with the applicant when he attempted to apply for legalization during the original filing period but that the applicant was turned away at that

time. The affiant fails to indicate whether he knows if the applicant resided in the United States during the requisite period in this affidavit. Therefore, it carries no weight as evidence that he did so.

6. An affidavit from [REDACTED] that was notarized on July 28, 2004. The affiant states that he went with the applicant to attempt to file for amnesty during the original legalization filing period in April 1988. He states that the applicant was turned away at that time. The affiant fails to indicate whether he knows if the applicant resided in the United States during the requisite period in this affidavit. Therefore, it carries no weight as evidence that he did so.
7. An affidavit from [REDACTED] that was notarized on October 10, 1992. The affiant states that he personally knows that the applicant has resided in the United States in Brooklyn, New York, Pompano Beach and Flushing New York for the duration of the requisite period. He states that he met the applicant in September 1982 at a party in Brooklyn, New York. As the affiant states that he did not meet the applicant until September 1982, it would not be possible for him to have personal knowledge of the applicant's residence in the United States or elsewhere prior to September 1982. Therefore, this affidavit carries no weight as proof that the applicant resided in the United States prior to September 1982. The affiant states that the longest period that he has not seen the applicant for was for two months in 1986. However, he does not provide any details regarding the frequency with which he saw the applicant during the requisite period, where they saw each other or what the circumstances of their meeting was. He does not state whether he saw the applicant during the time that the applicant has indicated he resided in Florida. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States from September 1982 until the end of the requisite period.
8. An employment letter from [REDACTED] that is dated July 29, 1989 and was notarized on April 26, 1993. The affiant states that the applicant worked with his construction company as a general helper from August 1986 and was paid in cash. The affiant fails to indicate how he is able to verify the applicant's start date with his company. He does not state whether he has consulted official records to determine his dates of employment. He fails to indicate whether there were periods of unemployment during the applicant's employment with him. Because this letter is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment letters must adhere to, it is only accorded minimal weight as evidence that the applicant resided continuously in the United States from August 1986 until the end of the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 6, 2006. In this NOID, the director stated that the applicant claimed to have traveled to Bangladesh from April to June in 1986 for a period of more than 45 days. The director found that this absence caused him to fail to maintain continuous residence during the requisite period. The director went on to say that

though the applicant submitted affidavits in support of his application, these affidavits were not sufficient to allow the applicant to meet his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following evidence that is relevant to his claim of having maintained continuous residence in the United States for the requisite period:

1. An affidavit from the applicant that states that he was not able to provide sufficient evidence in support of his application. He states that he was in Bangladesh at the time the director issued the NOID to him and therefore he was not able to gather sufficient evidence in the time period granted to him in the director's NOID. He states that he is submitting additional evidence in support of his application.
2. An affidavit from [REDACTED] that was notarized on March 3, 2006. The affiant states that he met the applicant for the first time in the United States in 1981. He states that the applicant was a teenager at that time. He states that the applicant was his neighbor in 1981 and that he met the applicant often. He goes on to say that he knows the applicant attempted to file for legalization under the "CSS program" in 1981 and that he went with the applicant. He states that the applicant's application was rejected at that time because the government was no longer accepting applications at that time. He states that the applicant returned to Bangladesh because his younger brother had been killed. He states that the applicant moved after that absence and he did not see him again until 1994. It is noted that the CSS Settlement Agreement did not exist in 1981. Similarly, the original legalization filing period did not begin until May 5, 1987. Therefore, this affiant's statement that he went with the applicant when he tried to file for legalization in 1981 is not credible.
3. An affidavit from the applicant that was notarized on March 3, 2006. The applicant states that he has lost most of the evidence he would have submitted in support of his application due to the passage of time. He states that in 1982 he tried to submit an application for legalization under the "CSS program." It is noted here that the CSS/Newman Settlement Agreements did not yet exist in 1982. Similarly, the original legalization filing period began on May 5, 1987. Therefore, it would not have been possible for the applicant to have attempted to file for a benefit that did not yet exist. He states that while he was residing in the United States, he learned that his brother died in a traffic accident. Therefore, he went home to Bangladesh for the funeral. He explains that he became ill after he returned to Bangladesh. He states that it took almost two and a half months to recover from this illness.
4. An affidavit from [REDACTED] that was notarized on March 3, 2006. The affiant submits a photocopy of his United States passport as proof of his identity with his affidavit. The affiant states that he is the applicant's uncle. He states that the applicant attempted to file for legalization in 1982 through the "CSS program." He

states that he himself entered the United States in 1980 and that he knows that the applicant entered the United States. However, he does not state whether he saw the applicant in the United States before January 1, 1982. He does not state the frequency with which he saw the applicant during the requisite period or whether there were periods of time during that period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period. Because this affiant states that the applicant attempted to apply for legalization before such a benefit existed, the credibility of statements made by this affiant is questioned.

5. An unsigned declaration from [REDACTED]. In this declaration, the declarant states that he first met the applicant on June 20, 1982 at a local mosque. He states that the applicant is his nephew and that he entered the United States in 1979. Because this declaration is not signed it carries no weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
6. A photocopy of a photograph. This photocopy has notes that indicate that the photograph was taken in August 1988. Notes also indicate that pictured are [REDACTED] and [REDACTED]. However, it is not clear where this photograph was taken or whether it was taken in the United States. Further, though the AAO cannot determine the date that this photograph was taken, the notes on this photograph indicate that it was taken subsequent to the requisite period. Because this photograph does not clearly relate to the requisite period, it carries no weight as proof that the applicant resided in the United States during that time.
7. A letter from [REDACTED], the Director of Human Resources of Tavern on the Green in New York. This letter is dated January 5, 2006. This letter states that affiant [REDACTED] has been employed by Tavern on the Green since December 16, 1986. Though this letter is proof that an affiant from whom the applicant has submitted evidence was present in the United States for at least part of the requisite period, this letter carries no weight as proof of the applicant's residence in the United States at that time.

It is noted that the applicant has submitted a copy of his marriage certificate showing he was married in 2005, a document showing his previous wife died in 2003 in Bangladesh, the birth certificate for the applicant's son who was born in 2005, a letter from the applicant's physician that states the applicant has been his patient since approximately 1995, and receipts that do not clearly relate to the requisite period. Though it is noted that the applicant submitted these documents, the issue in this proceeding is whether the applicant submitted sufficient evidence to prove he resided in the United States for the duration of the requisite period. Therefore, evidence that proves his residency in the United States after that period is not relevant and will not be considered.

The director denied the application for temporary residence on April 10, 2006. In denying the application, the director stated that though the applicant submitted additional evidence in support of his application as noted above, he did not overcome the director's assertion that he was absent from the United States for more than 45 days during the requisite period. The director stated that CIS did not have records that showed that the applicant had an approved I-131 Application for Travel Document prior to this departure. The director determined that because of this the applicant's absence from the United States was not casual or innocent. The director went on to say that this absence also represented a break in residency because it was in excess of a single absence of 45 days. Therefore, the director found that the applicant failed to meet his burden of establishing that he resided continuously in the United States for the duration of the requisite period.

The applicant submitted a Form I-694 Notice of Appeal of Decision on May 5, 2006. With this Form I-694 he submitted the following:

- A brief from the applicant dated May 2, 2006. The applicant states that his absence from the United States during the requisite period was longer than he anticipated it to be because he became ill during his absence. He asserts that the director overlooked his previous reply to the director's NOID which explained the nature of this emergent circumstance.

The record shows that in response to that Form I-694 Notice of Appeals of Decision submitted by the applicant on May 5, 2006, the director granted a *sua sponte* motion to reopen.

The director re-issued a decision on July 26, 2006. In this decision the director stated that her office had reviewed the applicant's appeal and brief and determined that the applicant overcame the director's grounds for the denial of his application. However, the director went on to say that CIS erred in stating that the applicant failed to provide a reason for his absence during the requisite period. The director states that CIS intended to state that the applicant failed to provide evidence to support the applicant's claim such as an accident report, death certificate or hospital report. The director states that though the applicant submitted a declaration explaining the circumstances of his absence, this statement did not allow the applicant to prove that this absence was brief, casual and innocent. The director mentions that the applicant has not proven that he obtained advance parole subsequent to May 1, 1987. It is noted here that the applicant has consistently indicated that his absence during the requisite period was prior to that date. Therefore, the AAO finds that this is not relevant.

The director goes on to state that the additional evidence submitted in response to the director's NOID did not allow him to meet his burden of proof. The director notes that the applicant has submitted an affidavit from [REDACTED] in which that affiant states that the applicant attempted to apply for legalization through the "CSS program" in 1981. The director notes that this would not have been possible, as there was no legalization program in 1981. The director also states that the applicant has not submitted evidence apart from his own testimony

that proves that he was present in the United States prior to January 1, 1982. Therefore, the director found that the applicant failed to meet his burden of proof and she denied his application.

On appeal, the applicant submits a declaration that was notarized on August 16, 2006. He states that he forgot to attach the death certificate for his brother, [REDACTED], with his reply. He states that he is now enclosing that death certificate as well as updated affidavits from affiants [REDACTED] and [REDACTED]. He states that a typographical or clerical error was made in their original affidavits. With his declaration he submits the following new evidence that is relevant to his residence in the United States during the requisite period:

- An affidavit from [REDACTED] that was notarized on August 15, 2006. The affiant submits a photocopy of an identification card that shows his name and a photograph and a date of April 29, 1982. The affiant states that the applicant entered the United States in December 1981. However, he fails to indicate how he knows this. The affiant goes on to say that he knows that the applicant attempted to file for legalization between May 5, 1987 and May 4, 1988 but was turned away. The affiant fails to state why his previously submitted affidavit states that the applicant applied for legalization prior to that time. He states that he knows he met the applicant in the United States before January 1, 1982. This affiant does not state the frequency with which he saw the applicant during the requisite period, nor does he state whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit carries very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on August 2, 2006. The affiant submits a photocopy of his New York State Identification Card issued on November 20, 2002. The affiant states that he first met the applicant at [REDACTED] in Brooklyn. He states that a family member resided there with the applicant at that time. This affiant states that the applicant traveled to the applicant's country from April 1986 until June 1986. This affiant does not state the frequency with which he saw the applicant during the requisite period, nor does he state whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit carries very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was notarized on August 14, 2006. The affiant submits a photocopy of his New York State Driver License issued to him on February 2002. The affiant states that the applicant entered the United States in December 1981. However, he fails to indicate how he knows this. The affiant goes on to say that he knows that the applicant attempted to file for legalization between May 5, 1987 and May 4, 1988 but was turned away. The affiant fails to state why his previously submitted affidavit states that the applicant applied for legalization prior to that time. He

states that he knows he met the applicant in the United States before January 1, 1982. This affiant does not state the frequency with which he saw the applicant during the requisite period, nor does he state whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit carries very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

- A photocopy of a death certificate that shows that [REDACTED] died on April 3, 1986.
- A receipt that is dated November 11, 1986 and shows the name [REDACTED].” This receipt is from a lumber and supply store. This receipt does not establish that the applicant entered the United States prior to November 11, 1986.
- An affidavit from [REDACTED] that was notarized on July 28, 2004. The affiant submits a photocopy of his New York State Identification Card issued to him on June 2005 with his affidavit. The affiant states that he has known the applicant since 1988. He states that the applicant requested that he go with him to an immigration office to apply for legalization in April 1988. He states that the applicant was turned away at that time. As this affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that he did so.
- An affidavit from [REDACTED] that was notarized on July 27, 2004. The affiant submits a photocopy of his United States Passport with his affidavit. The affiant states that he has known the applicant since 1986. He states that he went with the applicant on April 29, 1988 when he attempted to apply for legalization but the applicant was turned away at that time because he had a previous absence from the United States. As this affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that he did so.

The AAO has reviewed the evidence in the record as previously noted. The AAO finds that the applicant has failed to meet his burden of proof in this case. The applicant has submitted a G-325A Biographic Information Form to CIS on which he states that he resided continuously in Bangladesh until 1986. This indicates that the applicant could not have resided continuously in the United States for the duration of the requisite period. The applicant has also submitted affidavits from [REDACTED] and [REDACTED] and he has submitted an affidavit himself that assert that the applicant attempted to apply for legalization in 1981, 1982 and 1982 respectively. However, this would not have been possible, as there was not a legalization benefit in existence at that time. Though he has submitted updated affidavits from [REDACTED] and [REDACTED] that state that the applicant actually applied for legalization between May 5, 1987 and May 4, 1988, these affidavits do not indicate

why these affiants previously stated that the applicant attempted to apply for legalization in 1981 and 1982 respectively.

The applicant has not been consistent regarding the dates of his absence from the United States in forms he has submitted to CIS as his Form I-687 that is dated April 29, 1988 indicates he was absent from the United States from March to May of 1986 and other forms in the record indicate this absence was from April to June of 1988. Though the applicant has indicated that he was married in Bangladesh in 2001 his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements do not show that he was absent from the United States in 2001.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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.