



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
MSC-07-018-11031

Office: NEW YORK

Date: JUL 18 2008

IN RE: Applicant: [Redacted]

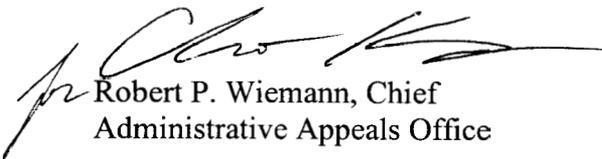
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A  
of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

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

  
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 asserts that he has met the requirements to establish eligibility for temporary resident status pursuant to the settlement agreements. He claims that he originally entered the United States as an undocumented alien sometime in October, 1980, that he shared living quarters with various individuals and was a “paying boarder”, that he worked for a number of different business entities on a cash basis, that he lost his original passport, and that the affidavits he submitted are sufficient to establish his claim of residence for the qualifying 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).

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.

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 has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 April 21, 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 his first address in the United States to be on [REDACTED] Brooklyn, NY, from October 1980 to July 1996. Similarly, at part #33, he described his employment in the United States as a day laborer from December 1980 to the present.

The applicant submitted the following documentation:

- Notarized declarations from [REDACTED], [REDACTED], and [REDACTED]. Mr. [REDACTED] claims that he first met the applicant at a cultural function held in Jackson Heights sometime in 1980 and that he has

remained friends with the applicant since that time. Mr. [REDACTED] attests that the applicant resided with him at the [REDACTED] address from October 1980 to July 1996 "sharing house rent and all other utility bills." Mr. [REDACTED] submitted his affidavit on business letterhead stationery, and affirms that he has known the applicant since 1980. Mr. [REDACTED] claims to be the manager of the Jubilee Travel Company, with an address in Astoria, NY. Mr. [REDACTED] who claims to be the proprietor of the Nupur Indian [sic] Restaurant, also submitted his statement on business letterhead stationery. Mr. [REDACTED] states in his affidavit that the applicant was a regular customer at his restaurant from December 1981 to December 1990. Mr. [REDACTED] attests that he first met the applicant at a cultural function held in Jackson Heights in 1980 and that he remains friends with the applicant to the present time.

It is noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or how they have direct, personal knowledge of the address at which he was residing during the critical time period commencing in January 1982. The declarants' uniformly ambiguous references to attending a cultural function, patronizing a restaurant, and claiming a long standing friendship over a period of many years are not persuasive. For example, there is no evidence to establish the existence of the Jubilee Travel Company or the Nupur restaurant, and no copies of a lease agreement or rental receipts to corroborate [REDACTED] claim that he and the applicant shared a residence at [REDACTED] during the critical period of time. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning between 10 and 20 years. For these reasons, all of these declarations listed above have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

Notarized declarations from [REDACTED], and [REDACTED]. Mr. [REDACTED] avers that he first met the applicant "in the USA before January 1, 1982", and he personally knows that the applicant entered the United States via the Canadian border, without inspection, sometime in October 1980. Mr. [REDACTED] avers to have known the applicant since December 1982. Dr. [REDACTED] claims to know the applicant since 1984, and [REDACTED] states that he has known the applicant since November 1985. The affidavits of [REDACTED] and [REDACTED] are without probative value because they did not enter the United States until 1984, thus, they cannot verify that the applicant entered the United States prior to January 1982. Consequently, these two particular affidavits are not relevant or probative of the applicant's date of entry and are accorded no weight.

The affidavits of [REDACTED] and [REDACTED] are devoid of any specificity regarding where they first met the applicant, how they date their acquaintance with him, or how they have direct, personal knowledge of the facts and circumstances of the applicant's entry and residence in the United States. For these reasons, the declarations from [REDACTED] and [REDACTED]

have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

- A notarized declaration from [REDACTED], who claims to be the general manager of the B&H General Contracting Corp. Ms. [REDACTED] asserts therein that the applicant was employed as a construction helper on a daily basis from April 1981 to August 1990. The AAO observes that the applicant did not identify this company as an employer on his Form I-687. Furthermore, there are no documents in the record to establish the existence of this business, such as pay schedules, tax returns, payroll lists, or articles of incorporation. Consequently, the affidavit submitted by [REDACTED] can be given limited probative weight.
- A notarized declaration from [REDACTED]. Mr. [REDACTED] claims to be the proprietor of the Dakota Bar and Grill, located at 1576 Third Avenue, 88<sup>th</sup> and 89<sup>th</sup> Streets, New York, NY. Mr. [REDACTED] avers that the applicant was employed as a helper from November 1982 to August 1984 and that he was paid in cash. However, the record contains evidence from the New York State Division of Corporations indicating that no business of that name is a registered entity in New York.

A signed statement from [REDACTED], who claims that he examined the applicant on January 18, 1982, an envelope postmarked October 22, 1987, and a Bell Lumber and Supply Co., Inc. receipt dated November 11, 1986. As none of these documents establish the applicant's entry in the United States prior to January 1982, they will be accorded no probative weight regarding that issue. However, these documents are relevant to the issue of residence during the requisite period, and are accorded such weight as appropriate to that issue.

A notarized declaration from [REDACTED] the alleged manager of the Shapla Lotus Pavilion restaurant, listed at 175 Second Avenue, New York, NY. Mr. [REDACTED] states that the applicant is known to him since 1981, and that he was employed on a part time cash basis from December 1981 to October 1986. However, the applicant did not list this employment on his Form I-687 application.

- Although the statements from the Shapla Lotus Pavilion, B&H General Contracting Corp, and the Dakota Bar and Grill are on company letterhead, these affidavits fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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 statements from these employers do not include much of the

required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Furthermore, the applicant did not identify any of these employers on his Form I-687.

The director denied the application for temporary residence on September 20, 2006. In denying the application, the director observed that the applicant's interview of March 23, 2006, was conducted entirely through the assistance of a Bengali interpreter. The director concluded that it was not credible that the applicant could not communicate in the English language despite living in the United States for over 25 years. The director also observed that the applicant admitted to one departure from the United States in 1987 in order to get married, but that the applicant never returned to Bangladesh thereafter. The director concluded that the applicant's one absence of less than 45 days to get married was not credible. The AAO notes that the record contains a notarized declaration from the applicant dated March 20, 2005, wherein the applicant claims that he returned to Bangladesh in 1987 to visit his ailing father. The applicant does not mention that he got married at that time. Furthermore, the director noted that the applicant's assertions that he worked for three different entities at once was equally not credible. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but emphasizes that he had difficulty establishing that fact with documentary evidence. He claims that he worked part time for three different entities at once, that he returned to Bangladesh to get married at his father's request, but that he "didn't find any way to travel to Bangladesh after that. The applicant also asserts that he is illiterate and that his memory is poor. The applicant submits no additional evidence to support his claim other than those documents and affidavits submitted with the original application for temporary residence.

The AAO observes that the applicant did not identify any employers on his Form I-687. The applicant's assertion therein that he was self-employed as a daily laborer is vague, lacking in detail and remains unexplained. The affidavits from the applicant's various friends, acquaintances, and series of employers lack specific factual detail, and are not amenable to verification for the reasons listed above. As such, they are not credible, probative evidence of the applicant's eligibility for temporary resident status.

In summary, the applicant has not provided any probative evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

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