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LI

FILE: [Redacted]  
MSC 05 032 10543

Office: NEW YORK

Date: **MAR 05 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.

A handwritten signature in black ink, appearing to read "D. King" or similar, written over a white rectangular background.

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 November 1, 2004. 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 situation on humanitarian grounds and approved his case. He states that the director overlooked his earlier response to the notice of intent to deny and denied the application without considering all evidence submitted. 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.* 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 1, 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 that he resided at [REDACTED] in Bronx, New York from April 1981 until July 1986 and at [REDACTED] in Bronx, New York from October 1986 until February 1992. 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, the applicant stated that he was self-employed performing odd jobs from May 1981 until September 1981. He indicated that he worked as a chef assistant at [REDACTED] in New York, New York from October 1981 until August 1987, and as a kitchen helper at [REDACTED] from September 1987 until December 1989.

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 the following evidence in support of his application:

- An affidavit from [REDACTED] who states that the applicant is a friend of his who "came to the USA since long time." He states that the applicant has resided with him at [REDACTED] Long Island City, New York since January 1996. The affiant does not state that he knew the applicant to be residing in the United States prior to January 1996, therefore his statement is not relevant to a determination as to whether the applicant continuously resided in the United States during the relevant period.
- A copy of an affidavit from [REDACTED] who stated that the applicant "came to this country since long" and lived in the affiant's apartment at [REDACTED] in Bronx, New York "until 07, 1986." He stated that the rent receipts and utility bills were in his name and the applicant contributed towards the payment of rent and household bills. Although not required to do so, [REDACTED] provided a copy of his New York State identification card as proof of his identity. Here, the affiant did not state when, where or how he met the applicant, or when the applicant first moved into his apartment. Although he indicates that the rent and household bills were in his name, he provided no corroborating evidence to show that he lived at this address during the requisite period. This affidavit can be given limited weight in establishing the applicant's residence in the United States in July 1986, but not prior to that date, as [REDACTED] did not corroborate the applicant's claim that he lived at this address beginning in April 1981 or otherwise state when he first met the applicant. Further, it is noted that [REDACTED] was barely 16 years old in April 1981 and it is unlikely that he had rent and utilities in his name at that time.
- A letter dated July 26, 2004 from [REDACTED] General Secretary of the Bangladesh Society, Inc. in New York. He stated that the applicant is a member of the society and has volunteered during many cultural and ceremonial events since 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) sets forth guidelines for attestations provided by churches and other organizations. These guidelines provide a basis for a flexible standard of the information that such affidavits should contain in order to render them 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)(v)(A) through (G), a signed attestation from an organization should: (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) be printed on the letterhead of the organization; (6) establish how the author knows the applicant and (6) establish the origin of the information being attested to. Here, [REDACTED] does not state the applicant's address of residence, establish the origin of the information being attested to, or establish how he knows the applicant, or whether he knew him during the requisite period. As it does not conform to the regulatory standards, this affidavit has limited probative value.
- An "Application for New Membership" in the Bangladesh Society, Inc., signed by the applicant on July 10, 2004, for the 2003-2004 year. This application for "new membership" does not support the applicant's claim on Form I-687 that he has been a member of this organization since 1985, nor does it corroborate the testimony of [REDACTED]

- A letter dated October 2, 2004 from [REDACTED] of the Islamic Council of American, Inc., Madina Masjid, who stated that the applicant has been participating in weekly Jum'aa prayer since he came to this country." [REDACTED]'s statement does not meet the regulatory requirements for letters from organizations pursuant to 8 C.F.R. § 245a.2(d)(3)(v), as outlined above. More importantly, he does not indicate that he has any knowledge of when the applicant first entered the United States or whether the applicant continuously resided in this country during the requisite period. Accordingly, this evidence will be given no evidentiary weight.
- Affidavits of employment from [REDACTED] from [REDACTED] and [REDACTED] confirming the applicants employment in the United States from 1998 to October 2004, from October 1996 to February 1998, and from January 1990 to September 1990, respectively. As none of these affidavits pertain to the relevant period of time, they are irrelevant to a determination regarding the applicant's continuous residence in the United States during the requisite period and have no probative value.
- A copy of a notarized letter from [REDACTED], president of the [REDACTED] in New York, New York [REDACTED] certified that the applicant "has been working in this restaurant since October 1981." The letter appears to have been signed on May 6, 1987. The letter from [REDACTED] fails 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; his duties with the company; 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. [REDACTED] letter does not meet these standards. He failed to state the applicant's address at the time of his employment, and he did not indicate whether the information was taken from company records. Although the name and address of the employer appear on the letter, the name of the company is misspelled and it does not appear to be official company letterhead. Because of these significant deficiencies, this letter is lacking in probative value.
- An affidavit dated October 5, 2004 from [REDACTED], a U.S. citizen residing in Melville, New York. [REDACTED] states that he personally knows that the applicant "came to the USA since long" and that he first met him in the United States in 1986. Although not required to do so, the affiant submitted a copy of the biographical page of his U.S. passport as proof of his identity. The applicant also submitted a "CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarations" completed by [REDACTED] in which he stated that he met the applicant in Bangladesh in 1966 and grew up together there. He stated that he knew the applicant came to the United States before 1982 because his parents told him. Because [REDACTED] does not claim to have come to the United States until 1986, his statement has no probative value as corroborative evidence of the applicant's residence in the United States prior to that time. His statement is also significantly lacking in detail, such as where or under what circumstances he first met the applicant in the United States in 1986, or how frequently he saw him during the

requisite period. Accordingly, this affidavit can be given only limited evidentiary weight in corroborating the applicant's claim of continuous residence in the United States after 1986.

- A copy of an affidavit from [REDACTED] a resident of New York who states that he first met the applicant in the United States in November 1985 and that the applicant is an honest and amiable person. In a separate questionnaire completed by [REDACTED] he stated that the applicant "came to meet me in a Bengali food restaurant after I reached New York." He indicated that he was residing in Bangladesh when the applicant moved to the United States. Although not required to do so, [REDACTED] provided a copy of the biographical page of his U.S. passport as proof of his identity. [REDACTED] does not claim to have any direct, personal knowledge of the applicant's continuous residence in the United States for the duration of the requisite period. He did not indicate how frequently he saw the applicant during the relevant period, after meeting him in 1985, or provide any other relevant details that would tend to lend credibility to his claim that he had a bona fide relationship with the applicant. [REDACTED] statements have very limited probative value in corroborating the applicant's claim of residence in the United States in 1986.
- A copy of an affidavit from [REDACTED] who states that he first met the applicant in January 1995. As [REDACTED] does not claim to have known the applicant in the United States during the requisite time period, this evidence is not relevant.
- An affidavit dated October 29, 2004 from [REDACTED] a resident of Elmherst, New York, who stated that he was "personally present" with the applicant while he was attempting to submit a legalization application in New York City in February 1988. He stated that the applicant arrived in the United States in April 1981, and that he knows the applicant has been in the United States continuously for 23 years. He described the applicant as a "good friend" who he sees "very occasionally in parties, community social gatherings and public meetings." Although not required to do so, it is noted that [REDACTED] did not provide proof of his identity or evidence that he was in the United States during the requisite period, nor did he provide a telephone number, thus his testimony is not readily amenable to verification. Although he stated that he has known the applicant for 23 years, he provided no relevant details regarding the events and circumstances of the applicant's residence in the United States, such as information regarding in what city the applicant resided or his occupation, how frequently he had contact with the applicant during the relevant period, or how Mr. Rahman first met the applicant. Therefore, this affidavit can only be afforded minimal weight as corroborating evidence due to its lack of detail.
- Copies of CSS/Lulac Legalization and Life Act Adjustment questionnaires completed by [REDACTED] and [REDACTED]. All but one of these individuals indicated that they met the applicant in Bangladesh, that they themselves resided in Bangladesh during the years 1981 through 1988, and that they received indirect information from friends or relatives regarding the applicant's entry to the United States. [REDACTED] stated that he first met the applicant in the United States, but not until 1990. As none of these individuals claim

to have any direct, personal knowledge of the applicant's continuous residence in the United States during the requisite period, their statements have no probative value.

- A completed CSS/LULAC Legalization and Life Act questionnaire completed by [REDACTED] who provided a copy of his Bangladesh passport as proof of his identity. [REDACTED] indicated that he first met the applicant at his home in November 1981, when the applicant came to visit him. He stated that he resided in Woodside, New York during the entire relevant period, and that he himself entered the United States in October 1981. [REDACTED] stated that he and the applicant were childhood friends and that they spend time together whenever they can. It is noted that the questionnaire is not signed or notarized, thus diminishing its probative value. Although [REDACTED] stated that he has been a good friend to the applicant since childhood, he provided no specific, relevant information regarding the events and circumstances of the applicant's residence in the United States. He did not indicate how frequently he had contact with the applicant during the requisite period. Although not required to do so, [REDACTED] did not provide a telephone number where he could be reached and thus his statement is not readily amenable to verification. Based on these deficiencies, this statement can only be afforded minimal weight as corroborating evidence of the applicant's claim of continuous residence during the requisite period.
- A notarized affidavit from the applicant in which he states that he originally entered the United States in April 1981 and has remained in the United States continuously in an unlawful manner. As stated above, 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.
- A copy of an air mail envelope addressed to the applicant at [REDACTED] in Bronx, New York. The letter bears a Bangladeshi postage cancellation stamp dated "5.12.84" In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245A.2(d)(6).

On March 13, 2006, the district director issued a Notice of Intent to Deny (NOID) to the applicant. The district director noted that only two of the affidavits submitted, from [REDACTED] and [REDACTED] were relevant to the applicant's claim that he entered the United States prior to January 1, 1982. The director observed that neither affiant appeared credible or amenable to verification, and that there was no proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. Similarly, the director found the affidavits from [REDACTED] and [REDACTED] to be insufficient to support the applicant's claim of continuous residence. The applicant was afforded 30 days in which to submit additional evidence in support of his application.

In a response received on April 13, 2006, the applicant submitted a short statement reiterating his claim of continuous residence during the requisite period. He submitted the following additional evidence in response to the NOID:

- An affidavit dated April 5, 2006 from [REDACTED], a resident of Brooklyn, New York who stated that he has resided in the United States since 1973. [REDACTED] indicated that he first met the applicant in August 1981 at his previous home located at [REDACTED] Brooklyn, New York. He stated that the applicant came to him to get a construction job and that he helped him. [REDACTED] further stated that the applicant was continuously present in the United States from January 1982 until May 1988 and that he is a good friend. Although not required to do so, Mr. [REDACTED] provided a copy of his New York driver license as proof of his identity.
- An affidavit dated March 29, 2006 from [REDACTED], a resident of Brooklyn, New York who stated that he has resided in the United States since 1976. He stated that he first met the applicant in October 1981 at a Bengali grocery store located at [REDACTED]. [REDACTED] further stated that the applicant was continuously present in the United States from January 1982 until May 1988 and that he is a good friend. Although not required to do so, [REDACTED] provided a copy of his New York driver license as proof of his identity.
- An affidavit dated April 7, 2006 from [REDACTED], a resident of Brooklyn, New York who stated that he has resided in the United States since 1979. He stated that he first met the applicant in July 1981 and first met him at his home in Brooklyn when the applicant came "to get some help for doing construction job." [REDACTED] further stated that the applicant was continuously present in the United States from January 1982 until May 1988 and that he is a good friend. Although not required to do so, [REDACTED] provided a copy of his New York State driver license as proof of his identity.

It is noted that while all three of these affiants claimed to be good friends of the applicant over a period of approximately 25 years, none of them provided any details regarding the events and circumstances of the applicant's residence in the United States which would tend to lend credibility to their claims that they have direct, personal knowledge of the events to which they are attesting. [REDACTED] and [REDACTED] both indicate that they met the applicant in 1981 when the applicant came to their homes looking for help finding a construction job, but they state no basis for their knowledge of the applicant's residence beyond confirming that they met him in 1981. They do not indicate how the applicant came to ask them for help, or how frequently they saw him during the requisite period. [REDACTED] claims to have met the applicant by chance in a grocery store and provides no additional information regarding how he dates his acquaintance with the applicant, or the extent of his contact with him beyond one meeting in October 1981. All three affidavits are significantly lacking in detail and thus have minimal probative value.

- A letter dated December 15, 1987 from [REDACTED], who stated that the applicant was first examined by him in November 1981 and subsequently seen on January 12, 1982, April 27, 1983, September 20, 1984, March 15, 1985, November 12, 1986 and December 15, 1987. Dr. Maniky did not indicate the source of the information to which he was attesting, provide copies of the applicant's records, or indicate whether CIS could have access to such records.
- A copy of a receipt from [REDACTED] in New York, New York. The receipt bears a handwritten date of November 7, 1986 and identifies the applicant as the customer. It is noted that

most of the handwriting on the receipt is faint and nearly illegible, while the applicant's name and the date are much darker. Without the original document, it cannot be determined whether this receipt is a true copy of a receipt issued to the applicant in 1986.

- A copy of an invoice from Sajra Distributors in Bronx, New York, showing that a three-piece dining room set was shipped to the applicant on April 30, 1982. There is no inventory number, nor any name indicated in the "Sold to" field on the invoice.
- Photocopies of two additional air mail envelopes addressed to the applicant in New York. The postmarks are nearly illegible, although one of them appears to be dated 1987.

The district director denied the application on July 10, 2006. In denying the application, the district director stated that the affidavits from [REDACTED] and [REDACTED] were not amenable to verification while the affidavit from [REDACTED] was not notarized by an individual who is licensed in the State of New York and was thus not credible. The director further determined that [REDACTED] does not appear to be a licensed dentist in the State of New York as purported and therefore his testimony was not credible. The director also found the few invoices, receipts and envelopes submitted to be insufficient to establish by a preponderance of the evidence that the applicant continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant apologizes for not having sufficient contemporaneous documentation to satisfy the director, but asserts that the affidavits he submitted "are of great probative value in this matter." He states that the director should have been "a little sympathetic and considerate" of his situation and accepted his explanations based on humanitarian grounds. He states that the director provided a "lame excuse" for denying his application and failed to consider his supporting documents. The applicant, however, does not address the specific deficiencies addressed in the district director's decision.

The applicant's assertions are not persuasive. 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 submitted minimal contemporaneous evidence of residence in the United States relating to the 1981-88 period consisting of photocopies of three envelopes and two receipts with minimal probative value.

While the applicant has submitted a total of nine (9) attestations from individuals, an employer and an organization concerning that period, none of them are credible, probative or amenable to verification for the reasons discussed above. 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 basic relevant information. The majority of the affiants simply state, in a conclusory manner, that they have known the applicant since a certain year during the requisite period 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, 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 20 or more years. Although not required, most of the affiants failed to provide a contact telephone number at which they could be reached for verification, nor did they provide any proof of their relationship with the applicant, or proof that they themselves were in the United States during the requisite period, which would have tended to make their testimony more credible. Given the applicant's reliance on affidavits that are lacking in probative value, 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.