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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05 231 14384

Office: NEW YORK CITY

Date: **JUL 29 2009**

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. 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.

John F. Grissom  
Acting 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 director in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Bangladesh who claims to have lived in the United States since July 1981, 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 May 19, 2005. The director denied the application, finding 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.

On appeal the applicant asserts that the director did not properly evaluate the documentation he submitted in support of his application. In the applicant's view, the evidence of record is sufficient to establish that he meets the continuous residence requirement for legalization.

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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists primarily of letters and affidavits from individuals who claim to have known the applicant during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since July 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The record includes (1) a letter from [REDACTED], present advisor and ex-president, executive committee of Islamic Council of America Inc. in New York City, dated May 3, 2005, stating that the applicant "has been personally known to me for a long time," and that the applicant attended weekly prayers at the mosque since 1981; and (2) a letter from [REDACTED] president of Jalalabad Association of America, Inc. in Astoria, New York, dated July 30, 2007, stating that the applicant "is personally known to me since a long," and that the applicant "is a bona fide member of the Jalalabad Association of America Inc."

The regulation at 8 C. F. R. § 245.a(d)(3)(v) specifies that attestation by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. None of the letters cited above show the applicant's precise dates of membership in the organizations, did not indicate where the applicant resided during the period of membership (or the 1980s in general), did not state how the authors knew the applicant, and whether their information about the applicant was based on personal knowledge, organizational records or hearsay. Since the letters do not comply with subparts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period for legalization.

The record also includes a letter from [REDACTED] dated May 10, 2005, stating that the applicant was employed at Hira Indian Restaurant in New York City, first a maintenance worker from November 1981 to December 1982, and later as a delivery man from January 1983 to December 1987.

The regulation at 8 C. F. R. § 255.a(d)(3)(i) specifies that past employment records, may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of the state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include: (a) alien's address at the time of employment; (b) exact period of employment; (c) periods of layoff; (d) duties with the company; (e) whether or not the information was taken from official company records; and (f) where such records are located and whether the Service may have access to the records. The letter from [REDACTED] was not written on the company's letterhead, did not specify [REDACTED] position in the business and that he has the authority to author such letter. The letter did not indicate the applicant's address during the period of employment. Finally, the letter is not supplemented by any earnings statements, W-2

Forms, Pay stubs or certification of filing with the federal or state authorities to show that the applicant was actually employed during any of the years listed on the letter. In view of the substantive deficiencies noted above, the AAO finds the employment documentation has little probative value. It is not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

Finally, the record includes affidavits and letters from individuals who claim to have resided with or otherwise known the applicant during the 1980s. The documents have minimalist or fill-in-the-blank formats with very little input by the affiants. One of the affiants – [REDACTED] – who claims to have resided with the applicant during the years 1981 to 1992, provided the addresses claimed by the applicant during the 1980s. However, considering the length of time they all claim to have known the applicant – in all cases since 1981 – the authors provided very few details about the applicant’s life in the United States such as where he worked, and the nature and extent of their interaction with him over the years. Nor are the letters and affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors’ personal relationships with the applicant in the United States during the 1980s. Most of the authors did not provide any documentation to establish their own identities and residence in the United States during the 1980s. For the reasons discussed above, the AAO finds that the letters and affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through the date the application was filed.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the analysis of the evidence in the record, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.