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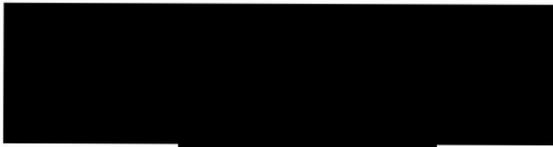
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

LI



FILE: [REDACTED]  
MSC-05-245-10509

Office: NEW YORK

Date: JUN 01 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, New York, and 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 denied the application after determining 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 noted that the affidavits submitted on behalf of the applicant were not credible or amenable to verification. The director also noted that the applicant did not establish that he was a class member of the CSS/Newman (LULAC) lawsuits. 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 is a class member and that he has submitted affidavits from affiants that are credible. He also asserts that he submitted photo identifications of the affiants in compliance with the evidence requirements. The applicant does not submit any evidence on appeal.

Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that he was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982.

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. See 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.

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 since before January 1, 1982, and throughout 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 United States Citizenship and Immigration Services (USCIS) where he stated at part #30 that he resided at [REDACTED] in Brooklyn, New York from April 1981 to March 1994. In

contrast, the applicant testified under oath during his immigration interview on March 20, 2006 that he resided at [REDACTED] in Brooklyn, New York from 1981 to 1994.

The applicant submitted the following attestations:

- A letter from [REDACTED] in which he stated that the applicant has been a member of the Jalalabad Association of America Inc. since 1986.
- An affidavit from [REDACTED] in which he stated that the applicant has been a member of the Bangladesh Society since November 1983.

These statements are inconsistent with the applicant's Form I-687 application at part #31 where he was asked to list all of his affiliations and associations with churches, clubs, and community organizations and he didn't list any. In addition, the declarations do not conform to regulatory standards for attestations by churches or organizations. Specifically, the declarants do not state the address where the applicant resided during the alleged membership period, they do not establish the origin of the information being attested to, nor have there been any membership records submitted to substantiate the declarants' claims. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted the following declarations as evidence:

- Fill-in-the-blank affidavits from [REDACTED], and [REDACTED] in which they stated that the applicant is their friend and relative and that they have known him since 1981. The affiants indicated that the applicant's address was [REDACTED] in Brooklyn, New York from April 1981 to March 1994. The statements are inconsistent with the applicant's testimony during his immigration interview where he stated that he resided at [REDACTED] from 1981 to 1994.
- An affidavit from Mohiuddin Contracting in which it was stated that the company employed the applicant as a construction worker from November 1987 to May 1994. The affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the applicant's address(es) during the alleged employment period or whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).
- Affidavits from [REDACTED] and [REDACTED] who stated that the applicant is their friend and relative and that he entered the United States before January 1, 1982. The affiants fail to specify the applicant's place of residence during the requisite period.
- Fill-in-the-blank declarations from [REDACTED] and [REDACTED] in which they stated that they met the applicant in 1981 in New York. They further stated that the applicant told them that he entered the United States illegally before January 1, 1982.

- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1982.

The declarants fail to specify the nature of their relationships with the applicant or the frequency with which they saw and communicated with the applicant throughout the requisite period. Although the declarants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the declarants do not provide information regarding the applicant's place of residence during the requisite period. Given these deficiencies, these declarations have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period. He has failed to overcome the director's basis for denial. The multiple inconsistencies found in the record cast doubt on the applicant's proof. Doubt cast on any aspect of the applicant's proof may 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above 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 on evidence that is inconsistent with statements he made and that are lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.