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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-232-16102

Office: NEW YORK

Date: JUN 16 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:

[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 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. 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 noted in the Notice of Intent to Deny (NOID) that the affidavits submitted on behalf of the applicant were not credible and were not amenable to verification. The director also noted that there was no proof in the record that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. The director further noted that on the applicant's Form G-325, Biographic Information, he stated that he resided in Bangladesh from May 1954 to March 1993. The director denied the application, finding that the applicant was statutorily ineligible for the immigration benefit sought.

On appeal, counsel asserts that the director's denial is baseless and unfair in that she ignored the evidence submitted in response to the NOID, and because the director erroneously determined that because the applicant submitted a Form I-700 application for Special Agricultural Workers he was statutorily ineligible for temporary residence status. 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 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.

The AAO will conduct a *de novo* review of the evidence including the submission in response to the NOID as authorized.

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 during the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted the following letters of employment:

- A letter from the manager of Jahan Contracting who stated that the company employed the applicant from December 1982 to November 1984 and he was paid in cash.
- A letter from a Farm Labor Contractor and a letter from Cook Farms who stated that the applicant worked on Cook Farms from September 1985 to April 1986.
- A letter from the proprietor of Z.A.D. Company who stated that he has known the applicant since 1981 and that the applicant worked for him.

Contrary to the above declarants' statements, on the applicant's Form I-687 application at part #33 where the applicant was asked to list his employment history, he stated that he was self-employed as a day laborer since August 1980. The inconsistencies cast doubt on the credibility of the applicant's evidence as 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). In addition, the declarations do not conform to regulatory standards for attestations by employers. Specifically, the declarations do not specify the address(es) where the applicant resided throughout the claimed employment period. The proprietor of Z.A.D. Company fails to specify the exact dates of the applicant's employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted the following attestations as evidence:

- Affidavits from [REDACTED], [REDACTED], and [REDACTED] who stated that they have known the applicant since 1981 and that they meet with the applicant at various social and cultural events.
- An affidavit from [REDACTED] who stated that he has known the applicant since November 1981 and he lists the applicant's residence since May 1980.
- Fill-in-the-blank affidavits from [REDACTED], [REDACTED], [REDACTED] who stated that they have known the applicant since 1985.

- An affidavit from [REDACTED] who stated that he has known the applicant since November 1987 and that he met the applicant through his parents.

Although the affiants state that they have known the applicant during the requisite period, their statements do not supply enough details to lend credibility to a relationship with the applicant for many years. For instance, the affiants do not indicate how they date their initial meeting with the applicant, they fail to specify how frequently they had contact with the applicant, or how they had personal first-hand knowledge of the applicant's presence in the United States. Further, other than [REDACTED], the affiants do not provide information regarding the applicant's place of residence during the requisite period. [REDACTED] states that he met the applicant in a Jame Mosque, but offers no other details about the applicant's life. It is noted that the applicant did not list an association with a mosque at part 31 of the Form I-687 application. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and continuously resided in the United States throughout the requisite period.

The applicant submitted the following attestations regarding his residency in the United States:

- An affidavit from [REDACTED] who stated that he has known the applicant since childhood and that the applicant came to the United States from Canada and stayed with him as a roommate from May 1980 to September 1985.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1981 and that he and the applicant lived together at [REDACTED] in New York from September 1985 to September 1986.
- An affidavit from a representative of GPC Realty Corp. who stated that the applicant has been a tenant at [REDACTED] in Bronx, New York since 1987.
- A declaration from [REDACTED] of Toronto Ontario, Canada who stated that the applicant traveled from Bangladesh to Canada in May of 1980, stayed a few days with him, and then traveled to the United States.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the affiants' statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable first-hand knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an

affiant knows an applicant and that the applicant has lived and worked in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affiants' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted the following evidence:

- A letter from [REDACTED], who stated that the applicant is being treated at Bellevue Hospital Medical Center for diabetes, adrenal insufficiency and severe osteopenia and that he is being treated with various medications that he will have to take for the rest of his life. [REDACTED] fails to specify the dates during which the applicant was under his care.
- A copy of the applicant's Social Security Statement of earnings for the years 1988 through 1999. This statement demonstrates the applicant's presence in the United States in 1988.
- A notice letter from the INS to the applicant dated January 13, 1988. Although this statement is some evidence of the applicant's presence in the United States in January of 1988, it is insufficient to show his continuous residence in the United States throughout the requisite period.

The applicant submitted the following attestation from an organization:

- An affidavit dated October 21, 2007 from the president of the Jalalabad Association of America, Inc. who stated that he met the applicant in December of 1980 and that the applicant is a general member of the association. The affiant stated that the association's records contained the applicant's membership number and his current address of [REDACTED] in Bronx, New York. Contrary to the declarant's statements, the applicant indicated on his previous Form I-687 at part #34 and his current Form I-687 at part #31 that he was not associated or affiliated with any churches, groups, clubs, or community organizations. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership; it does not state the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

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 throughout the requisite period. He has failed to overcome the director's basis for denial.

There are multiple inconsistencies and contradictions found in the record that have not been explained.

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 inconsistencies and contradictions found in the record, and the applicant's reliance on evidence with little probative value, 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 has failed to overcome the director's grounds for denial. 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.