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FILE: [REDACTED]  
MSC-05-145-10764

Office: NEW YORK

Date:

**MAR 04 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:

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 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 or had been continuously physically present in the United States for the duration of the requisite period. The director noted that the affidavits submitted by the applicant were not credible, were lacking in detail, were not supported by corroborating evidence, or were not relevant to the applicant's claimed presence in the United States during the requisite period, and that the copy of the applicant's identification card did not have an issuance date. The director noted that the applicant's own affidavits were self-serving and insufficient to overcome the grounds for denial. The director also noted that the evidence submitted by the applicant was contradictory to his statements made in his Form G-325, Biographic Information, and that the applicant's claim of not knowing the contents of the Form was insufficient to overcome the grounds for denial. 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 submitted sufficient evidence to establish his eligibility for temporary resident status. The applicant further asserts that the affidavits he submitted as evidence, including the employment affidavit, are credible, and that he signed his Form G-325 without being unaware of its contents. The applicant submits an affidavit on 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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 evidence:

- A photocopy of a membership card bearing the applicant's name from the Bangladesh Society Inc. New York. The card does not have an issuance date.
- An affidavit from [REDACTED] of the Bangladesh Society Inc. New York in which he stated that the applicant has been an active member of the organization since January 1982.
- An affidavit from [REDACTED] of the Astoria Islamic Center in Astoria, New York in which he stated that the applicant has been an active member of the organization and has attended congregational prayers since July of 1986.

The above noted evidence is inconsistent with the applicant's Form I-687 application at part #31, where it asks the applicant to list all affiliations and associations with churches, clubs, and other organizations. The applicant failed to list any affiliations or associations with any religious organization, club or organization. This unresolved inconsistency cast doubt on the applicant's proof. In addition, the affidavits do not conform to regulatory standards for attestations by organizations or churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affidavits do not show inclusive dates of membership nor do they establish the origin of the information being attested to. The affiants' fail to specify the applicant's place of residency during the period of membership, 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted the following affidavits as evidence:

- An employment affidavit from [REDACTED] in which he stated that the applicant was employed as a farm laborer from May 1, 1985 to May 1, 1986. The affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affidavit does not specify the applicant's dates of employment, the address(es) where the applicant resided during the claimed employment period, the number of hours the applicant worked, or any layoff periods during which the applicant was not employed. 8 C.F.R. § 245a.2(d)(3)(i). The affiant also fails 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).
- An affidavit dated February 27, 2006 from [REDACTED] in which he stated "I met [REDACTED] approx[imately] fifteen years ago." Here, the affiant claims to have known the applicant since 1991, and therefore, his statement is irrelevant to the applicant's

claimed presence in the United States prior to January 1, 1982, and throughout the requisite period.

- An affidavit dated February 27, 2006 from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant lived with his friend, who was the affiant's best friend, in an apartment next to his. The affiant further stated that he was born in 1959 and resided at [REDACTED] in Maspeth, New York; and that he has resided at [REDACTED] in Jackson Heights, New York for the past 10 years. He stated that the applicant attended his Christmas party, that he and the applicant became friends, and that they have socialized together since. Here, the affiant's statements are inconsistent with the applicant's Form I-687 application at part #30 where the applicant does not state that he ever lived in Maspeth, New York or Jackson Heights, New York. The affiant fails to specify the length of the applicant's residency. It is also noted that the affiant fails to specify the name of the best friend who the applicant allegedly resided with.
- An affidavit from [REDACTED] in which he stated that he met the applicant in 1981 at a social gathering of the Indian Cultural Festival in Jackson Heights, New York. He further stated that the applicant was seated next to him at the social gathering and told the affiant that he came from Bangladesh a few days earlier, looking for a job. The affiant also stated that although he was unable to locate employment for the applicant, the affiant was told that the applicant was selling news papers somewhere in the streets of Manhattan. The affiant has failed to demonstrate that his statements are based upon his first-hand knowledge of the applicant's entry into the United States or the applicant's whereabouts and circumstances of his residency in the United States during the requisite period.

In denying the application, the director noted the discrepancies and inconsistencies in the evidence submitted, and the failure of the applicant to overcome the grounds for denial.

On appeal, the applicant reasserts his claim of eligibility for temporary residence status.

The applicant submitted an affidavit as evidence on appeal from [REDACTED] in which he states that he is the general manger of the [REDACTED] located at [REDACTED] in New York, New York, and that the applicant was his tenant, living in apartment [REDACTED], from December 1981 to May 1985. Here, the statement is contradictory to the statement made by [REDACTED] concerning the applicant's residency in the United States. It is also inconsistent with the applicant's Form I-687 application at part #30 where he failed to indicate that he resided at the above noted address.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. There is insufficient evidence in the record of proceeding to

demonstrate the reliability of the attestations submitted. The applicant has failed to provide an explanation for the numerous inconsistencies and contradictions found in the record of proceeding. 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 affidavits pertaining to the applicant's alleged employment and organizational membership fail to conform to regulatory standards.

It is noted that the evidence submitted by the applicant is contradictory to the information he provided on his Form G-325, Biographic Information, where it is stated that he resided in [REDACTED] India from April 1963 to August 1985. Although the applicant claims that the Form G-325 was prepared for him and that he was unaware of its contents at the time he signed the form, he has failed to provide independent documentation to substantiate this claim. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed 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 upon affidavits that are inconsistent with his statements, contradictory, lacking in detail, and that do not conform to regulatory standards, 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.