

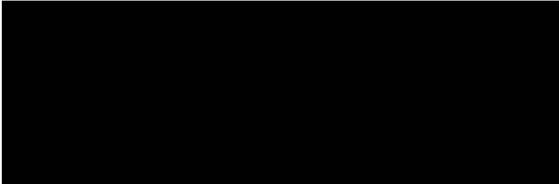
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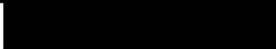


**U.S. Citizenship
and Immigration
Services**



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FILE:



MSC-06-062-13071

Office: NEW YORK

Date:

MAR 17 2009

IN RE:

Applicant:



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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district 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 district 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 unlawful residence in the United States since prior to January 1, 1982.

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 the applicant's attempt to recant his testimony given under oath during his immigration interview in an effort to explain away the many inconsistencies and questionable evidence contained in the record of proceeding. The director further noted that the information submitted by the applicant appeared to have been scripted or rehearsed. The director noted in the Notice of Intent to Deny that the affidavits submitted by the applicant appeared not to be credible or amenable to verification. 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 the director's decision is arbitrary and capricious, violates the principles of fundamental fairness of due process, and is invalid under the law. The applicant further asserts that he has proven by a preponderance of the evidence that he resided in the United States during the requisite periods. The applicant asserts that his testimony and the other evidence he has submitted is credible and support his claimed eligibility for the immigration benefit sought. The applicant also asserts that he was not provided an interpreter although it was clear during his immigration interview that his English skills were very poor. The applicant submits evidence 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 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 a Form I-589, Request for Asylum in the United States, dated October 25, 1993 that he signed and dated under penalty of perjury. The applicant stated at part #12 of the application that he arrived in the United States on August 5, 1989. The applicant stated at part #18 of the application that during his time in college, he was chased, harassed, beaten, punished, threatened and put in jail by the BNP; resulting in his having to finally leave his country for the United States. The applicant also submitted a signed and dated Form G-325, Biographic Information, in which he stated that he resided at [REDACTED] in Dhaka, Bangladesh, India from September 1967 to August 1989; and that as a student he attended City College in Dhaka, Bangladesh, India from March 1986 to August 1989.

The applicant submitted the following attestations:

- **Affidavits from** [REDACTED] dated November 16, 2005 and February 8, 2006, and from [REDACTED] in which they stated that they met the applicant when he came to the United States in May 1981. They also stated that the applicant lived continuously in the United States except for his brief absences in December 1984, July 1987, and July 1989. They stated that the applicant resided with them at [REDACTED] in Brooklyn, New York from May 1981 to November 1988; and that he resided at [REDACTED] of America in Orlando, Florida from 1988 to 1989. Affiant [REDACTED] stated that he and the applicant would meet at parties, religious functions, and other community programs. Affiant [REDACTED] stated that the applicant was employed as a newspaper salesman from 1981 to 1988 and at a gas station in Orlando, Florida from 1988 to 1989. They submitted a copy of a deed dated July 29, 1981 for the premises known as [REDACTED] in Brooklyn, New York, where the affiants' names appear as buyers. Here, the affiants' statements are inconsistent with the applicant's Form I-589 and Form G-325 where he stated, under penalty of perjury, that he resided in Bangladesh, India as a college student until August 1989. It is further noted that although the affiants stated that the applicant resided with them at [REDACTED] address since May 1981, the recorded deed for that property is dated July 29, 1981. It is also noted that [REDACTED] has failed to submit any evidence to substantiate his claimed knowledge of the applicant's employment history.
- An affidavit from [REDACTED] of the [REDACTED] in which he stated that the applicant has lived in the United States since 1981 and has been active with the association since 1987. Here, the affiant's statement is inconsistent with the applicant's Form I-687 at part # 31 where he fails to list any affiliation or association with any religious group, social club or community organization. In addition, the affidavit does not conform to regulatory standards for attestations by churches or organizations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affiant does not state the address where the

applicant resided during the alleged period, nor does the affiant establish the origin of the information being attested to.

- An affidavit from [REDACTED] in which he stated that the applicant is his cousin and that he picked up the applicant from the Port Authority Bus Terminal in May 1981. He further stated that the applicant resided with him at [REDACTED] in New York for a week, and since there was not enough room at his residence, the affiant helped the applicant find another place to stay. He stated that he would visit the applicant nearly every month after that time. The affiant's statement is inconsistent with the applicant's sworn statements that he resided in Bangladesh, India until August 1989. His statement is also inconsistent with the applicant's Form I-687 application where he did not list the affiant's address as his residence. The affiant also fails to specify the applicant's place of residence during the requisite period.

The director determined that the applicant's testimony and statements and affidavits he had submitted appeared not to be credible and that he had failed to establish his eligibility for temporary resident status.

On appeal, the applicant reasserts his claim of eligibility for the immigration benefit sought.

The applicant submitted on appeal an affidavit from [REDACTED] in which he states that the applicant is his relative and that he has known him since he was a child. The affiant states that he personally knows that the applicant came to the United States in May 1981 because he called on him for help once he arrived. The affiant also states that the he has personal knowledge that the applicant resided at [REDACTED] in Brooklyn, New York from May 1981 to November 1988; and that the applicant has been employed as a newspaper man from 1981 to 1988. Here, the affiant's statement is inconsistent with the applicant's sworn statements on his Form I-589 and Form G-325 where he stated under penalty of perjury that he first entered the United States in August 1989. The statement is also inconsistent with the deed for the property listed above which recorded transaction date is not until July 29, 1981.

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. He has failed to overcome the issues raised by the director. The affidavits submitted are inconsistent with sworn statements made by the applicant and are lacking in detail and probative value. There has been no explanation given for the numerous inconsistencies and contradictions contained in the record of proceeding. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt 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, 591-92 (BIA 1988). In addition, affiant [REDACTED]'s statement does not conform to regulatory standards for

attestations by churches or organizations. Although the applicant claims that he was not provided with an interpreter during his immigration interview, the record shows that an interpreter was present during the proceeding.

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 documents that are inconsistent with his statements, contradictory to other evidence contained in the record, fail to comply with regulatory standards, and are lacking in detail and in 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 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.