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FILE: [REDACTED] Office: NEW YORK  
MSC-05-220-10507

Date: MAY 05 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of  
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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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 although the applicant testified during his immigration interview that he was a Bangladeshi national, he refused to provide information as to when he first entered the United States. The director also noted that the affidavits submitted were not 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 he entered the United States on January 5, 1981. He also asserts that he lost his original documents and has submitted affidavits sufficient to establish his continuous residence in the United States since before January 1, 1982. He submits affidavits 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

Although the applicant stated on appeal that he entered the United States on January 5, 1981, on his I-687 application at part #30, he stated under penalty of perjury that he resided at [REDACTED] in E. Elmhurst, New York from June 1980 to July 1986. There has been no explanation given for this inconsistency.

The applicant submitted the following attestations as evidence:

- Affidavits dated November 10, 1987 and December 25, 2004 from [REDACTED] in which he stated that he has known the applicant since he first entered the United States in June of 1980. He further stated that the applicant lived with him at [REDACTED] Elmhurst, New York from June 1980 to July 1986. He also stated that the applicant worked with him from 1982 to 1988.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since September of 1981 and that they met at a restaurant in New York where the applicant worked as a kitchen helper. He further stated that to the best of his knowledge the applicant

resided at [REDACTED] in E. Elmhurst, New York from June 1980 to July 1986 and at [REDACTED] in Woodside, New York from August 1986 to December 1993. The affiant also stated that he and the applicant would accompany each other on shopping trips, that they attended various cultural activities together, and that they would discuss their affairs with each other.

These affidavits are inconsistent with the applicant's statement on appeal in that he has indicated that he entered the United States on January 5, 1981. It is also noted that affiant [REDACTED]'s statement with reference to the applicant being employed as a kitchen helper at a restaurant is inconsistent with the applicant's Form I-687 application at part #33 where he did not list that he was employed by a restaurant. These unresolved inconsistencies and contradictions 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 applicant submitted the following employment affidavits:

- An affidavit from [REDACTED] of M&M Construction, NY Inc. in which he stated that he has known the applicant since 1981 and that the applicant has been working for the construction company part-time since August 1988.
- An affidavit dated June 3, 2004 from [REDACTED] of E. Hoque General Constructing Corp. in which he stated that he has known the applicant since 1981 and that the company has employed the applicant as a part-time construction worker from August 1982 to October 1987. An affidavit dated March 7, 2006 from [REDACTED] in which he stated that he has known the applicant since 1987 and that the applicant would visit him every now and then. Here, the affiant's statements are contradictory and there has been no explanation given for this contradiction.

Here, the affiant's statements are inconsistent with the applicant's Form I-687 application at part #33 where he stated that he was self-employed as a day laborer from September 1980 to May 2005. In addition, the declarations do not conform to regulatory standards for attestations by employers. Specifically, the affiants do not specify the address(es) where the applicant resided during the claimed employment periods, nor do they indicate 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).

The applicant submitted the following attestations:

- An affidavit dated October 22, 2004 from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant is his neighbor. He further

stated that to the best of his knowledge, the applicant entered the United States before January 1, 1982 and has resided in the country since then.

- An affidavit from [REDACTED] in which she stated that she has known the applicant since December 1981 when he approached her about employment.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant entered the United States before January 1, 1982.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1987 and that the applicant would visit him every now and again. He also stated that the applicant entered the United States before January 1982.

The affidavits do not appear to be credible. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. They also fail to specify the nature of their relationships with the applicant during the requisite period. There is no evidence to demonstrate that the affiants had first-hand knowledge of the applicant's entry into the United States, his place of residence in the United States, or the circumstances of his existence throughout the requisite period. Affiants [REDACTED] and [REDACTED] fail to specify where and under what circumstances they first met the applicant in the United States. Affiant [REDACTED] fails to specify where and when the applicant was his neighbor. At his interview, the applicant signed a sworn statement indicating he does not know the affiant [REDACTED] and his friends helped "make up papers" for him.

The director determined that the applicant had failed to establish his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. He submits the following attestations:

Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1981, that the applicant entered the United States before January 1, 1982, and that the applicant has continuously resided in the United States. Here, the affiants have failed to specify the frequency with which they saw and communicated with the applicant and the applicant's place of residence during the requisite period.

In the instant case, the applicant has failed to establish his continuous residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the basis for the director's denial. The affidavits submitted are contradictory and are also inconsistent with statements made by the applicant on his Form I-687 application. The attestations in general are lacking in detail.

According to evidence in the record, the applicant departed the United States on December 11, 2003 pursuant to a deportation order. He may be inadmissible if he subsequently re-entered the United States without receiving prior permission (I-212).

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 detract 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, it is concluded that the applicant has failed to establish his 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.