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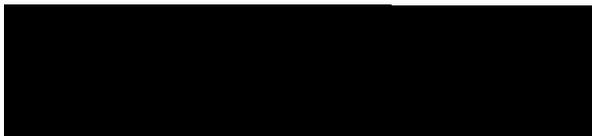
U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] MSC-06-090-11072

Office: MOUNT LAUREL

Date: **MAY 11 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<sup>1</sup>

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

<sup>1</sup> The applicant was represented by [REDACTED]. Mr. [REDACTED] was convicted in the United States District Court for the Southern District of New York for willfully causing the subscription of an immigration document containing a material false statement and presenting an immigration document containing a false statement. Based on this conviction, [REDACTED] was suspended on May 7, 2008 from the practice of law before the Department of Homeland Security and the Executive Office for Immigration Review pending final disposition of his case.

**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 Acting District Director, Mount Laurel, New Jersey. 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 denied the application, finding 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.

On appeal, the applicant addresses the deficiencies cited in the denial notice. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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 245(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)(1).

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)(1) 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. 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

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<sup>2</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, 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. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several witness statements and an employment attestation. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

In regard to the applicant’s employment, the record contains an employment attestation from [REDACTED] which states that the applicant worked with him from September 1981 to 1988. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien’s address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where the records are located and whether the Service may have access to the records. This letter fails to comply with the cited regulation because it does not: provide the applicant’s address at the time of employment; duties with the company; and whether or not the information was taken from

official company records. Notably, [REDACTED] does not indicate the name and location of where the applicant was employed. Nor does he state his own position and title with the company. It should further be noted that the applicant left blank part #33 of the Form I-687 application where applicants are requested to list their employment history into the United States since entry. For these reasons, this employer attestation is deemed not credible and is without any probative value.

In regard to the applicant's residence, the record contains an attestation from [REDACTED] which provides that the applicant resided with him from 1981 to 1988 as a roommate at [REDACTED] Brooklyn, New York. This statement fails to provide concrete information to demonstrate a sufficient basis for reliable knowledge about the applicant's residence during the requisite period. For instance, the witness statement does not indicate how [REDACTED] first became acquainted with the applicant. Nor does it explain [REDACTED] living arrangement or agreement with the applicant. Further, it does not convey where the applicant was employed during the requisite period. Given the lack of detail, this witness statement is of little probative value.

The record of proceedings contains a witness statement from [REDACTED] which provides that the applicant visited him a number of times in 1985 and 1988. It states that he knows the applicant from Bangladesh and that the applicant left Bangladesh for the United States in 1981. The attestation fails to provide [REDACTED]'s address in 1985 and 1988, and the location where the applicant visited Mr. [REDACTED] in 1985 and 1988. It is therefore unknown whether the applicant visited [REDACTED] in the United States or abroad. Further, it does not explain whether [REDACTED] has personal knowledge of the applicant's travel to the United States in 1981. As such, this witness statement is of little probative value.

The record also contains a witness statement from [REDACTED], which states that he knows that the applicant came to the United States in 1981. It further states that due to family emergencies the applicant left the United States at the end of 1987 for a short period of time and returned. This affidavit fails to provide enough details to lend credibility to [REDACTED]'s claimed relationship with the applicant. For instance, it does not describe how and when he first became acquainted with the applicant. Nor does it state how frequently he had contact with the applicant during the requisite period or explain his personal knowledge of the applicant's presence in the United States. Further, the attestation does not provide information regarding where the applicant lived or was employed during the requisite period. Therefore, this witness statement is of little probative value.

The final items of evidence in the record consist of witness attestations from [REDACTED] and [REDACTED]. The attestation from [REDACTED] provides that he has known the applicant for a long period of time. The attestation from [REDACTED] provides that he has known the applicant since 1982. Neither of these statements indicates whether the witnesses first met the applicant in the United States or abroad. Moreover, they do not indicate that the witnesses have any knowledge of the applicant's residence or presence in the United States during the requisite period. For this reason, the statements are without any probative value.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required 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.