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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  
and Immigration  
Services

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FILE: [REDACTED] Office: NEW YORK  
MSC 06 096 15011  
[REDACTED]

Date:

SEP 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:

[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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. The director found the applicant's testimony implausible because he stated on his Form G-325A, Biographic Information, signed on December, 1992 that he resided in Bangladesh from February 1960 to September 1989.

On appeal, counsel states the director's decision to deny the applicant's application based on his testimony not being credible is not based on sound reasoning or legal points and was in error. Counsel further states that United States Citizenship and Immigration Services (USCIS) has given some reference to a Form G-325A, Biographic Information, which mentions the alien's address in Bangladesh from February 1960 to 1989. Counsel asserts the applicant never signed such Form G-325A and that, in fact, no G-325A Form was provided with the Form I-687 application.

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)(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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since September 1981.
2. A notarized statement from [REDACTED] who states that the applicant resided with him “since his arrival to the United States since 1981-1987.”
3. Notarized statements from [REDACTED] who states the applicant shared accommodations “with me since August 1987 to 1990.”
4. A notarized statement from [REDACTED] who states that the applicant lived at his apartment at [REDACTED] in Astoria, New York, from December 30, 1984 to October 22, 1991.
5. A letter from [REDACTED] of Islamic Council of America Inc., Madina Masjid in New York, New York, who states he knows the applicant has resided in the United States since 1982.

[REDACTED] and [REDACTED] (Item # 1 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, these documents are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiant’s personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the applicant’s continuous

unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. [REDACTED] and [REDACTED] (Items # 2 and # 3) do not provide the addresses where they resided with the applicant from 1981 to 1990. On his Form I-687, the applicant stated that he resided at [REDACTED] in Brooklyn, New York, from April 1981 to July 1987. However, [REDACTED] (Item # 4 above) states the applicant lived in his apartment at [REDACTED] in Astoria, New York, from December 30, 1984 to October 22, 1991. On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list the Islamic Council of America Inc., Madina Masjid (Item # 5).

On appeal, counsel states that the director referenced a Form G-325A, Biographic Information, which mentioned the applicant's address in Bangladesh from February 1960 to 1989. Counsel asserts the applicant never signed such Form G-325A and that, in fact, no G-325A Form was provided with the Form I-687 application. The record reflects that on his G-325A signed on December 4, 1992, the applicant stated that he resided abroad at '[REDACTED]' in Islama, Bangladash (sic) from February 1960 to September 1989. In his notarized statement filed in response to the director's Notice of Intent to Deny dated June 13, 2007, the applicant responded to the G-325A issue and stated:

That previously I mentioned in my G-325A Biographic Information that I resided in Bangladesh from 1960 to March, 1989. I am extremely sorry to say that I am not well educated and my biographic form was "filled" by a third person. After the comparing my file copy, it is noted that the mentioned year was completely writing error and in this connection I am apologized to you. I shall be highly grateful to you if you kindly correct the date from 1960 before I entered the United States. It is understood that I entered the United States in the year 1981, therefore, before entering the United States I was in Bangladesh.

The applicant acknowledges that the submission of "my G-325A Biographic Information" was made but indicates that the form was "filled" by another person. Absent evidence to support the applicant's assertions, the Form G-325A signed December 4, 1992 establishes that he was not continuously residing in the United States during the requisite period.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence

during the requisite period. The applicant's asserted residential history on his Form I-687 is accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

It is noted that on April 5, 1996, the applicant was granted the opportunity to voluntarily leave the United States by May 5, 1996 by the Director, New York. The record does not show that he departed this country as ordered.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.