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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]  
MSC-09-300-60869

Office: NEW YORK

Date:

DEC 10 2010

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

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the Northwest Immigrant Rights Project (NWIRP) Settlement Agreements was denied by the director of the New York office. 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, NWIRP Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he entered the United States as a nonimmigrant prior to January 1, 1982, and that his authorized stay expired before such date or that he violated the terms of his nonimmigrant status in a manner known to the Government as of January 1, 1982. Further, the director found that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status for the duration of the requisite period. Therefore, the director denied the application, finding that the applicant was 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 evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant did not submit any additional evidence on appeal.<sup>1</sup> The AAO has considered the applicant's assertions, 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 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)(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.

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<sup>1</sup>The documents that the applicant submits on appeal have previously been submitted into the record.

<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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.* 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The first issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 in nonimmigrant status 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 witness statements and one document. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

In the instant I-687 application, in a class member worksheet dated January 10, 1991, in a statement dated July 16, 2009, and in a sworn statement given at the time of his interview on January 22, 2010, the applicant stated that he initially entered the United States with a nonimmigrant visa in August 1981, but he offered no evidence in support of his assertion. The applicant has submitted statements from the following witnesses:

The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant or where he resided during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

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<sup>3</sup> Witness [REDACTED] the applicant's father, was living in Bangladesh during the requisite period and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period.

In addition, in two of his statements [REDACTED] asserts that from January 1984 to March 1985 the applicant resided with him at [REDACTED]. However, in the instant I-687 application, and in an I-687 application filed in 1988, the applicant did not list this address as a residence during the requisite period.<sup>4</sup> Due to these inconsistencies, the statements of this witness will be given no weight.

Further, [REDACTED] (the applicant's father), [REDACTED] state that the applicant first entered the United States in California without a visa. However, in the instant I-687 application, the applicant stated that he first entered the United States in New York with a visa. Due to these inconsistencies, the testimony of these witnesses will be given no weight.

The applicant has submitted three employment verification letters from representatives of [REDACTED] in Miami. [REDACTED] owner, and [REDACTED] supervisor, state that the applicant worked for the company as a sod worker from April 1, 1985 to June 30, 1986.

The employment verification letters of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. 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 of 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 records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties or the applicant's address at the time of employment. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these reasons, the employment verification letters are of little probative value.

The record contains an attestation from [REDACTED] general secretary of the Bangladesh Society Inc., New York, stating that the applicant was a member of the society since February 21, 1983. However, in the instant Form I-687 application, the applicant states that he was a member of

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<sup>4</sup>The applicant also failed to list this address as a residence in a Form G-325A, biographic information sheet, signed by the applicant on February 8, 2003, and filed contemporaneously with a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act.

the society since February 1982.<sup>5</sup> The record also contains a letter from [REDACTED] general secretary, of the Islamic Council of America Inc. [REDACTED] who states that the applicant was associated with the [REDACTED] although he does not state the dates of association. However, the applicant failed to list his association with the [REDACTED] in the initial I-687 application, filed in 1988.<sup>6</sup> The applicant has also submitted the attestation of [REDACTED] president of [REDACTED] who states that the applicant has been a member of the organization in the United States since 1981.<sup>7</sup> However, the applicant failed to list his association with the [REDACTED] the instant I-687 application and in the initial I-687 application filed in 1988. These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period. The applicant has also submitted an attestation from [REDACTED] executive vice president of [REDACTED] who states that the applicant has been a member of the organization since March 3, 1983.

Further, the attestations do not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. These attestations fail to comply with the cited regulation. Therefore, these attestations are of little probative value.

The applicant has submitted a copy of a receipt from [REDACTED] dated October 3, 1982, which containing the applicant's signature. This document is some evidence of the applicant's presence in the United States in 1982.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

<sup>5</sup> The applicant's initial Form I-687, filed in 1991 to establish the applicant's CSS class membership, lists the applicant's membership in the society since February 1983.

<sup>6</sup> In the instant I-687 application, the applicant states that he has been associated with the [REDACTED] since June 1982.

<sup>7</sup> Witness [REDACTED] was living in Bangladesh during the requisite period and, therefore, did not have first-hand knowledge of the applicant's continuous residence in the United States during the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in 1988 to establish the applicant's CSS class membership, and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act filed in 2003. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the manner in which he entered the United States during the requisite statutory period.

In the instant I-687 application, in a class member worksheet dated January 10, 1991, and in a sworn statement given at the time of his interview on January 22, 2010, the applicant stated that he initially entered the United States in New York with a nonimmigrant visitor's visa on August 22, 1981.

At the time of his interview on January 14, 2005, in a statement dated April 17, 2007, and in a statement dated February 3, 2003, the applicant stated that he first entered the United States in California, without inspection.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the manner in which the applicant first entered the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.