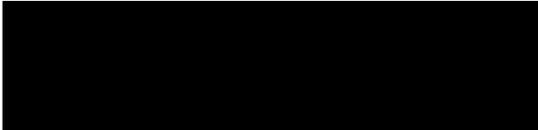


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**U.S. Citizenship
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FILE: [REDACTED]
MSC 04 325 10176

Office: LOS ANGELES

Date: **AUG 13 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of continuous residence in the United States during the requisite period and submits additional evidence in support of his claim.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 20, 2004. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at “Burbank, California: from November 1981 to March 1985, at “Hollywood, California” from March 1985 to June 1987, and at “Hollywood, California” from July 1989 to January 1990. It is noted that there is a two-year gap between June 1987 and July 1989. The applicant stated on his prior Form I-687 signed on March 16, 1990, that he resided at “Hollywood, California” from March 1985 to June 1987 and at “Hollywood, California” from July 1987 to January 1990.

At part #33, where applicants are instructed to list all employment since first entry into the United States, the applicant indicated that he worked for the India Inn Restaurant located at “Hollywood, California” as a waiter and cook. He did not list his dates of employment for India Inn Restaurant. During his legalization interview on June 14, 2005, the applicant stated that he worked on farms from 1981 to 1983 and worked for the India

Inn Restaurant from 1983 to 1985. In a personal statement dated September 29, 1990, the applicant stated that he worked in the fields picking strawberries near Oxnard, California "from 1982 to 1986 and through 1989." This statement contradicts his statement during his legalization interview that he worked on farms from 1981 to 1983 and worked at the India Inn Restaurant from 1983 to 1985. Furthermore, the applicant stated on his prior Form I-687 signed on March 16, 1990, that he had worked for the India Inn Restaurant since 1990. This contradicts also contradicts his statement during his legalization interview that he worked for the India Inn Restaurant from 1983 to 1985.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated March 22, 1990, from [REDACTED] then residing at [REDACTED], Hollywood, California." [REDACTED] stated that he had personal knowledge that the applicant resided at [REDACTED], Hollywood, California" from July 1987 to January 1990.

The applicant also submitted an affidavit dated March 20, 1990, from [REDACTED]. [REDACTED] stated that he had personal knowledge that the applicant had resided in Los Angeles, California, from March 1985 to June 1987.

The applicant included an affidavit dated March 20, 1990, from [REDACTED]. [REDACTED] stated that he had personal knowledge that the applicant resided in Los Angeles, California, from November 1981 to June 1983 and from July 1983 to February 1985. [REDACTED] explained that he was residing at [REDACTED], Burbank, California" during that period and "[REDACTED] was still there."

In response to a CIS request for additional evidence dated June 14, 2005, the applicant submitted a personal affidavit in which he stated that [REDACTED] owned the Bengal Tiger Indian Restaurant from 1983 to 1996, but [REDACTED] sold his restaurant and he no longer had any contact with [REDACTED]. The applicant further stated that [REDACTED] moved to Bangladesh in 2003 and had since passed away. He provided contact telephone numbers for [REDACTED] and [REDACTED].

On appeal, the applicant reiterates his claim of continuous residence in the United States during the requisite. The applicant also submitted two affidavits dated June 7, 2006, from [REDACTED]. [REDACTED] states in one affidavit that she has known the applicant since 1982. She explains that she met the applicant at Don Jose Restaurant in Torrance, California, in 1982. [REDACTED] further states:

He and his friend would meet my friend and I there for dinner and drinks on several occasions. I gave him a ride home a couple of times.

In a separate affidavit [REDACTED] states that she gave the applicant and one of his friends a ride from Hollywood to the local legalization office in 1987. She states, "[o]n the way I saw that he had a money order for \$185.00 dollars and a completed application to drop off."

However, [REDACTED] did not provide any verifiable information such as the applicant's addresses in the United States during the requisite period. Nor did she provide any information regarding the frequency of her contact with the applicant during that period.

The applicant also submits an affidavit dated June 6, 2006, from [REDACTED] who explains that she is [REDACTED]'s daughter. [REDACTED] states that she has known the applicant since she was three years old because he is her mother's friend. She further states that she and her mother sometimes gave him rides and "helped him out when he needed it." However, [REDACTED] does not provide any verifiable information such as the applicant's addresses in the United States during the requisite period. Nor does she provide any information regarding the frequency of her contact with the applicant during that period.

The applicant provided a letter dated June 3, 2006, from [REDACTED]. [REDACTED] states that he has "seen [REDACTED] in Los Angeles, California, "during the year of 1985/198[year illegible]. [REDACTED] provided a photocopy of the California Identification Card as proof of his identity.

It is noted that the applicant filed a Form I-131, Application for Travel Document, with CIS on August 8, 2005. The applicant indicated on the Form I-131 that he wanted to travel to Bangladesh to "to visit my very ill mother. My mother is very sick and like to see her. Did not see her for more than 23 years."

This statement contradicts the applicant's claim on the Form I-687 that he was in Bangladesh as recently as November 1987 visiting his sick mother. If he had not seen his mother "in more than 23 years" as he stated on the Form I-131, he would not have seen her since sometime in 1981 or 1982.

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, it is incumbent on 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. (Comm. 1988). The contradictions in the applicant's claimed dates and places of residence, his dates and places of employment, and his inclusive dates of absence outside the United States raise questions of credibility regarding his claim of continuous residence in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only five people concerning that period, all of which lack sufficient detail and verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

It is noted that the applicant was arrested in Los Angeles, California, on May 24, 1991, and charged with disorderly conduct: prostitution in violation of section 647(b) of the California Penal Code. On June 25, 1991, the applicant pled guilty to this charge in the Municipal Court of Los Angeles, San Fernando Judicial District, County of Los Angeles, State of California. He was placed on summary probation for a period of 24 months and ordered to pay fines and fees totaling \$352.50, and perform 35 hours of community service. ([REDACTED]). This single misdemeanor conviction does not render the applicant ineligible for temporary resident status pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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