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U.S. Citizenship  
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Services

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FILE:

MSC-05-251-17180

Office: NEW YORK

Date:

**APR 30 2008**

IN RE:

Applicant:

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:

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 "R. 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, 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined 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 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, counsel asserts that the director erred in his decision as a matter of law, and that the applicant has submitted sufficient evidence to establish his claimed eligibility for temporary resident status.

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 or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 8, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of his pay statements from NB Combo, Inc. dated March through June of 2006. These documents are dated subsequent to the requisite period and therefore cannot serve to demonstrate the applicant's presence in the United States during the requisite period. The applicant also submitted a copy of his daughter's Indian passport that showed that she was born on March 20, 1988.

The applicant also submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he knows that the applicant resided at [REDACTED] Woodside, New York, and [REDACTED] Jackson Heights, New York, from January of 1982 to April of 1985. He further stated that he was the applicant's co-worker. Here, there is no evidence to demonstrate that the affiant's statements are based upon first hand knowledge of the applicant's circumstances throughout the requisite period. The affiant fails to indicate who his employer was during the period in question. The affiant also fails to submit corroborating evidence such as copies of his employment statements, rent receipts, cancelled checks, or invoices to substantiate his claim. He fails to demonstrate that he himself was present in the United States throughout the requisite period. There is nothing in the record to demonstrate the frequency with which the affiant saw the applicant during the requisite period. The affidavit is significantly lacking in detail and therefore, can

be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED], the manager of Balaka Indian Restaurant in which he stated that he employed the applicant as a member of his kitchen staff from November of 1981 to July of 1983. Here, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does he indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not conform to regulatory standards and lacks probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] the proprietor of Calcutta Café in which he stated that he employed the applicant as a part of the kitchen crew from June of 1983 to May of 1985. The affiant does not indicate that he knew the applicant since prior to January 1, 1982. He fails to indicate that he himself was present in the United States during the alleged employment period. In addition, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the affiant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not conform to regulatory standards and lacks probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED], a farm labor contractor, in which he stated that to the best of his knowledge, he employed the applicant for 113 man-days as an agricultural worker from May 1, 1985 to July 31, 1986, and that he is not holding any payroll records concerning the applicant because he had no social security number. The affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Because this affidavit does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

An affidavit from [REDACTED] vice president of The Indian Society in which he stated that the applicant became a member of the organization in June of 1986, and that his membership application indicated that he had resided in the United States since October of 1981. Here, the applicant's alleged presence in the United States since October of 1981 is not based upon the firsthand knowledge of the affiant. Further, the affiant has not provided a copy of the membership application to corroborate his statements. There is no evidence of record to demonstrate the frequency in which the affiant saw the applicant during the claimed membership period. Nor is there any evidence to show that the affiant himself was present in the United States during the requisite period. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED], the secretary of Forum for Human Rights in which he stated that the applicant became a member of the organization on May 5, 1988 and continued his membership until June of 2001. He further stated that the applicant is personally known to have been residing in the United States since 1981. The affiant fails to submit corroborating evidence to demonstrate his firsthand knowledge of the applicant's presence in the United States since 1981. There is no evidence of record that the affiant himself was present in the United States during the requisite period. He fails to indicate the frequency in which he saw the applicant during this period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In a Notice of Intent to Deny (NOID) that was submitted to the applicant, the director noted that the applicant stated during his interview with immigration officials on July 5, 2006, that he was married in 1988 and had a child who was born on March 20, 1988. The director further noted that the applicant had failed to provide a copy of his marriage certificate or his child's birth certificate. The director also noted that the affidavits submitted by the applicant were not accompanied by identity documents and did not contain proof that the affiants themselves were present in the United States during the requisite period. The director indicated that the applicant submitted two employment affidavits, but that there was no evidence of record to demonstrate that they ever existed or that the applicant actually worked for the establishments.

In response to the director's NOID counsel asserts that the affidavits submitted by the applicant are credible and that they present proof of the applicant's residence in the United States. Counsel further asserts that some of the affiants can no longer be contacted and that the business establishments may no longer exist due to the passage of time. Counsel also states that the applicant worked without authorization and therefore does not have tax records or pay stubs to demonstrate his claim. He submits no additional evidence.

In denying the application, the director reiterates his statements made in the NOID and notes that the applicant has failed to overcome the reasons indicated in the NOID for the intent to deny the Form I-687

application. The director determined that the applicant has failed to meet his burden of proof that he continuously resided in the United States since prior to January of 1982.

On appeal, counsel reasserts his claim noted in response to the NOID and states that the evidence submitted by the applicant is credible and sufficient to substantiate his claim of continuous residence in the United States since before January 1, 1982. He does not submit any additional evidence on appeal.

In the instant case, the applicant has not provided sufficient, probative evidence of his continuous unlawful residence in the United States since prior to January 1, 1982. He has failed to adequately address the issues raised by the director in the NOID. After giving due weight to the evidence submitted by the applicant, it is determined that he has submitted attestations that are significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period. The applicant has failed to submit corroborating evidence to substantiate his claim of continuous unlawful residence in the United States since October 15, 1981. Furthermore, although specifically requested by the director, he has failed to provide evidence with respect to his marriage in India in 1988 and his child being born in India in March of 1988. It is noted that the applicant indicated on his Form I-687, Application for Status as a Temporary Resident, part #32 dated June 8, 2005, that he was absent once from the United States, and that was from September of 1987 to October of 1987, when he traveled to visit his mother in India. It is also noted that the applicant indicated on his Form I-687, Application for Status as a Temporary Resident, part #32 dated March 28, 1991, at part # 11, that he signed and dated under penalty of perjury, that he was never married. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. In addition, the applicant has failed to provide independent documentary evidence to substantiate the claims made by the affiants.

The absence of sufficiently detailed 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 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 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.