

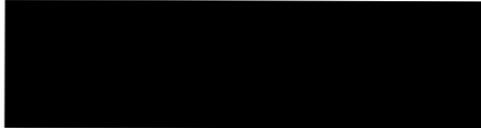
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEWARK

Date:

**AUG 29 2008**

MSC 05 244 23710

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 "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, Newark, 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, on June 1, 2005. On August 8, 2006, the applicant was interviewed by a Citizenship and Immigration Services (CIS) officer. The record includes the director's Notice of Intent to Deny (NOID) the application and the applicant's October 10, 2006 response. On December 13, 2006 upon review of the record, the director denied the application, determining 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 for the applicant submits a brief and re-submits documents and affidavits previously provided.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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).

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. *See* 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period. The AAO considers only those documents relevant to establishing the applicant's entry into and continuous unlawful residence for the pertinent time period.

On the Form I-687 filed June 1, 2005, the applicant indicates that he last entered the United States on June 14, 2001 without a visa. The applicant lists his address for the pertinent time period as: [REDACTED] from October 1981 to March 1988. The applicant lists his absences from the United States during the applicable time period as: in August 1987 to September 1987 to India to see family and friends; and March 1988 to June 2001 to India to see family and friends. The applicant lists his employment during the applicable time period: as an employee at the Sleeping Giant Motel in Hamden, Connecticut from November 1981 to March 1988

The record also includes affidavits submitted to substantiate the applicant's entry into and continuous unlawful residence for the requisite time period including:

- A May 12, 2005 affidavit signed by [REDACTED] of Hamden, Connecticut who declares: that he has known the applicant as a family friend since 1981; that he personally knows the applicant resided in the United States in the years 1981 to 1988 as the applicant was his friend; that the affiant lived at [REDACTED] Connecticut during the years 1981 to 1988; and that the applicant was working for him "under business name Sleeping Giant Motel" located at [REDACTED] Connecticut during 1981 to 1988.

- A May 12, 2005 affidavit signed by [REDACTED] of Hopatcong, New Jersey who declares: that he has known the applicant since 1983 as a family friend; that he knows that the applicant was living in the United States during the years 1983 to 1988; that the affiant was living at Stanhope, New Jersey during the years 1983 to 1990.
- A January 16, 2006 affidavit signed by [REDACTED] of Spring Valley, Connecticut who declares: that he met the applicant in November 1981 at a get together in New Jersey at a religious festival (Dipawali); that during the meeting the applicant told him he was working at the Sleeping Giant Hotel in Connecticut and invited him to visit; that he has been in continuous contact with the applicant and personally knew that the applicant lived at [REDACTED] Connecticut from 1981 to 1988; that he and his family stayed for a day at the Sleeping Giant Hotel in Connecticut in 1985 where the applicant was working; and that he personally knew that the applicant visited India in August 1987 for four weeks and attempted to apply for legalization in 1987 but was refused.

A January 18, 2005 affidavit signed by [REDACTED] of Schiller Park, Illinois who declares: that he met the applicant for the first time in November 1981 at a religious function held in New York; that the applicant invited him to his house in Connecticut; that he realized the applicant was the son of his friend's cousin; that he was continuously in contact with the applicant through phone calls; that he knows the applicant lived at [REDACTED] Connecticut from 1981 to 1988; that during a trip to New Haven, Connecticut in the summer of 1986 he met the applicant once again; and that he personally knew that the applicant visited India in August 1987 for four weeks and attempted to apply for legalization in 1987 but was refused.

A February 2, 2007 affidavit signed by [REDACTED] of Flanders, New Jersey who declares: that he met the applicant in November 1981 at a Thanksgiving party in New Jersey; that the applicant told him that he was working at the Sleeping Giant Hotel in Connecticut and invited him to his house; that he was continuously in contact with the applicant and personally knows the applicant lived at [REDACTED] Hamden, Connecticut from 1981 to 1988; that he visited his family in Connecticut and during his visit saw the applicant at the Sleeping Giant Hotel where the applicant was working; and that he personally knew that the applicant visited India in August 1987 for four weeks and attempted to apply for legalization in 1987 but was refused.

The record also includes the applicant's January 10, 2006 sworn statement wherein he declares: that he entered the United States in November 1981 through Canada; that after his entry into the United States he resided in Connecticut until March 1988; that he visited India in 1987 to visit his mother for four weeks; and that he attempted to apply for legalization in 1987 but was refused.

On appeal, counsel for the applicant asserts that the affidavits submitted establish the applicant's continuous presence in the United States by a preponderance of the evidence.

The AAO has reviewed the evidence of record and finds that the applicant has not established his entry into and continuous unlawful residence in the United States for the applicable time period.

The affidavit of [REDACTED] notes that the affiant knew the applicant as a family friend since 1981 and that the applicant worked for him at the Sleeping Giant Motel in Hamden, Connecticut. However, this affidavit lacks the essential corroborative details that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) requires from employer letters. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. In addition, the affiant failed to declare that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. It is not clear from the affidavit that the affiant owned, managed, or was otherwise associated with the Sleeping Giant Motel. Due to the lack of information in the affidavit regarding the affiant's relationship with the Sleeping Giant Motel, it is not possible to determine that the affidavit was written or provided by the actual employer. The applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence beginning prior to January 1, 1982 and continuing to sometime in 1988. The affidavit has no probative value as it fails to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) and lacks detail.

The affidavits of [REDACTED] are virtually identical to each other. Each affiant states that they first met the applicant in November 1981 at either a religious festival (Dipawali) in New Jersey, a religious function in New York, or at Thanksgiving in New Jersey. Each affiant claims to have visited the applicant in Connecticut in 1985 or 1986 or in the case of Sumant Desai does not provide a time frame for a visit. Each affiant claims continuous contact and personal knowledge that the applicant resided at the Sleeping Giant Hotel from 1981 to 1988. However, none of the affiants provide details of the claimed relationship of over eight years. The affiants, other than referencing the claimed initial meeting and one visit, do not provide any information of the circumstances and events or of any personal interactions with the applicant over the course of their relationship. The affiants all claim to know that the applicant visited his mother in India for four weeks in 1987 and know that the applicant tried to apply for legalization in 1987 but do not describe how they know this information. Because the affidavits are significantly lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Likewise, the affidavit of Bhadresh Patel does not describe the circumstances surrounding his initial meeting with the applicant in 1983 or provide any information regarding subsequent interactions with the applicant. This affidavit, too, has minimal probative value.

The deficient affidavits and the applicant's sworn statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The affidavits lack credibility and probative value for the reasons noted. The affidavits submitted do not provide relevant, probative details of the applicant's entry into the United States and continuous unlawful presence. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 lack of information in the affidavits and the lack of any other credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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. The appeal will be dismissed.

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