

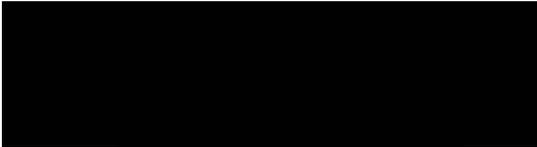
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**U.S. Citizenship
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FILE: [REDACTED]
MSC-05-270-11305

Office: NEW YORK

Date: **FEB 21 2008**

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 "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, the applicant asserts that the affidavits he submitted are credible and are sufficient to prove his residency in the United States during the requisite period, and he submits evidence in an effort to substantiate 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 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).

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.

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 27, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] Staten Island, New York, as his address from August of 2004 to the present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided documentation that is not relevant to the requisite period; and therefore, cannot be used to support the applicant's claim of residency.

The applicant also submitted the following attestations:

- Three identical letters from [REDACTED] and [REDACTED] in which they claimed to have known the applicant since 1981, and that he lived at [REDACTED] Staten Island, New York from 1980 to 1989. In addition, they all claimed to know that the applicant was born in Sri Lanka and came to the United States in 1980. Here, the

declarants fail to indicate how they met the applicant, where they met the applicant or whether they met him in the United States. It is further noted that there is nothing in the record to show that the information contained in the boilerplate declarations was based upon personal knowledge. The declarants have failed to specify the frequency with which they saw the applicant during the requisite period. They have not provided evidence that they themselves were present in the United States during the requisite period. Though not required to do so, the declarants have not included proof of their identity with these statements. Because the declarations are significantly lacking in detail, do not appear to be based upon firsthand knowledge, and because they are not amenable to verification, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] of Our Lady of Good Counsel Parish, Staten Island, New York, in which he stated that the applicant has been a parishioner of the church since 1980, that through the years they have had numerous contacts, and that the applicant has demonstrated his responsible, caring, honest, sincere and reliable nature. This statement is inconsistent with the applicant's information on his Form I-687 application, at part #31 where he was asked to list all affiliations and associations with churches, organizations, and clubs, he did not list any. Because the declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on the assertion made by the declarant. The letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). It is further noted that it does not appear from the declaration that the declarant was aware of the applicant's admitted absence from the United States for over 15 years. Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and 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.

A handwritten letter from [REDACTED] in which he stated that he has known and has been associated with the applicant's parents since 1981. He further stated that they resided at [REDACTED] and that they had a young son. The declarant also stated that he had a close relationship with the applicant's family and was always treated warmly by them. Here, the declarant fails to indicate how he met the applicant, where he met the applicant or whether he met him in the United States. There is nothing in the record to show that his statement concerning the applicant's residence in the United States was based upon firsthand knowledge or personal observations. The declarant has failed to specify the frequency with which he saw the applicant during the requisite period. The declarant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, the declarant has not included proof of his identity with his statement. Because the declaration is significantly lacking in detail, and do not

appear to be based upon firsthand knowledge, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 15, 2005, and again on June 12, 2006. The director noted in the later NOID that the applicant was unable to answer specific questions during his interview with Citizenship and Immigration Services pertaining to his entry into the United States and that the attestations submitted were neither credible nor amenable to verification. The director also noted that there was no proof that the affiants [REDACTED] or [REDACTED] had direct personal knowledge of the events and circumstances dealing with the applicant's residency.

In response to the NOID, the applicant submitted as evidence copies of his New York State Driver License, employment badge and a pay statement from Evergreen Company, and a letter of employment all of which were dated subsequent to the requisite time period. The applicant also submitted the following attestations:

- A letter from [REDACTED] of the Our Lady of Good Counsel Parish, Staten Island, New York, in which he stated that the applicant has been a parishioner of the church since 1980, that he attends Mass weekly, and that through the years he has demonstrated a responsible, caring, honest, sincere and reliable nature. This statement is inconsistent with the applicant's information on his Form I-687 application, at part #31 where he was asked to list all affiliations and associations with churches, organizations, and clubs, he did not list any. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). It is further noted that it does not appear from the declaration that the declarant was aware of the applicant's admitted absence from the United States for over 15 years. Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and 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] in which it is stated that he has known the applicant since July of 1981 as a volunteer for the New York Police Precinct Community Council in Staten Island, New York, and that he is still involved with the council as a volunteer. Here, the statement made is implausible in that the applicant's date of birth is October 8, 1968, which would have made him twelve years old at the time he became a volunteer for the police department. It is further noted that it is highly unlikely that the New York Police Department would have accepted an underage person who had recently arrived in the United States illegally to serve as a volunteer. Because the statement is not credible, it cannot be afforded any weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant failed to address the pertinent issues raised in the NOID regarding the affidavits previously submitted and that the affidavit submitted by [REDACTED] was not credible in that there was no proof that he had direct personal knowledge of the events and circumstances of the applicant's residency.

On appeal, the applicant asserts his claim of eligibility and submits copies of evidence that is dated subsequent to the requisite period. He also submits photocopies of [REDACTED] and [REDACTED]'s identification.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. The photocopies of the declarant's identification are unaccompanied by any cogent explanation from the applicant which directly addresses the issues raised by the director.

The absence of sufficiently detailed documentation to support and 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 information in his application, his inability to answer questions with any degree of particularity during his interview with CIS, 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 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.