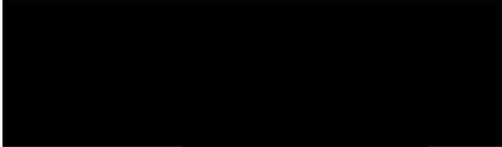




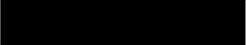
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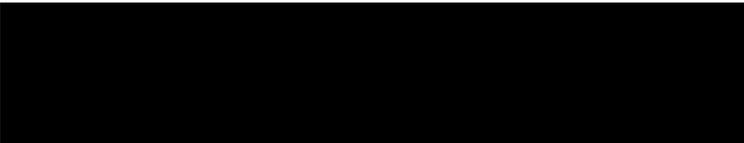
Office: NEW YORK

Date: **JAN 10 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. 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.

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. Specifically, the director stated that evidence in the record did not consistently show the applicant's absences during the requisite period. The director further noted that the applicant had previously submitted a Form I-589, Request for Asylum in the United States, and a Biographical Information Form G-325A, both of which he signed on January 11, 1988. The director went on to say that on these forms, the applicant indicated that he resided continuously in India until 1986. 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 his previously submitted affidavits allow him to establish, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. He goes on to say that he misrepresented facts in his previously filed Form I-589 and on his form G-325A but that he has filed a Form I-690 Application of Waiver of Grounds of Inadmissibility to waive his misrepresentation of facts.

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.* 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 (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 for the duration of the requisite period. 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 June 1, 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in Elmhurst, New York from May 1981 until July 1986; and [REDACTED] in the Bronx, New York from August 1986 until October 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that during the requisite period, he was absent from June to July 1986 and then during the month of June in 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be that of a cashier at an express news stand on the Washington Bridge in the Bronx, New York from May 1981 until November 1989.

The record contains a photocopy of passport # [REDACTED] issued to the applicant at the regional passport office in Ahmedabad, India on May 27, 1986. This indicates that the applicant was in India in May 1986, which is not consistent with an absence he showed on his Form I-687. This casts doubt on whether the applicant has fully and accurately represented his absences from the United States on his Form I-687.

The record also contains a Form I-589 and a Biographic Information Form G-325A, both signed by the applicant on January 11, 1988. The applicant's Form G-325A states that the applicant resided at [REDACTED] in the Gujarat Province of India from January 1982 until January 1985 and then at [REDACTED] in Gujarat Province from January 1985 until July 1986. The applicant also indicated on this form that from 1982 until 1986 he was employed as a farmer in Kalol, Gujarat Province. Because his addresses of residence or his employment from January 1982 until July 1986 is not shown

consistently on these forms and on the applicant's Form I-687, doubt is cast on whether the applicant represented his employment and residence in the United States accurately on his Form I-687.

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record further contains a Form I-690 Application for Waiver of Grounds of Inadmissibility, submitted to CIS on June 1, 2005. On this form, the applicant has requested a waiver of excludability pursuant to section 212(a)(6)(C)(i) or (ii) of the Act. He indicates that he would like his excludability that resulted from his voluntary departure in November 1989 to be waived. The record indicates that this waiver was denied on July 13, 2006.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant the following:

- An affidavit from [REDACTED] dated May 19, 2005. Here, the affiant states that he is a United States Citizen who has known the applicant as a friend since December 1981. He does not indicate how he met the applicant. He states that he personally knows that the applicant has lived in the United States since December 1981 because he was in contact with the applicant during the requisite period. However, here, he does not indicate the nature of his contact with the applicant. He does not indicate whether this was contact over the telephone or if he personally saw the applicant, nor does he state where this contact occurred or the frequency with which he saw the applicant during the requisite period. He fails to indicate whether there were periods of time during the requisite period during which he did not see the applicant. Though [REDACTED] is a United States Citizen, he does not offer proof that he resided in the United States for the duration of the requisite period. Because this affidavit contains information that conflicts with the applicant's Form G-325A in the record and because of its significant lack of detail, this affidavit can be accorded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] dated May 18, 2005. Here, the affiant states that he first met the applicant in the United States in May 1981. He goes on to say that the applicant lived with him from 1986 until November 1989. Though the affiant states that the applicant lived in Elmhurst,

New York from May 1981 until 1986, he does not indicate how he knows that the applicant lived at this address. He does not indicate the frequency with which he saw the applicant from 1981 until the applicant began to reside with him in 1986. Though the affiant submits a passport as proof of his identity, he does not submit evidence that proves that he resided in the United States during the requisite period. Because of its significant lack of detail, and because the address of residence that the affiant states the applicant resided at during the requisite period is not consistent with what the applicant showed in other documents found in the record, very minimal weight can be accorded to this affidavit in establishing that the applicant resided in the United States for the duration of the requisite period.

In the director's Notice of Intent to Deny (NOID), issued on March 11, 2006, the director noted that her office did not find the affidavits submitted by the applicant submitted in support of his applicant to be credible because it did not appear that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. The director also noted the discrepancies between the applicant's Form I-687 and other documents in the record. The director specifically noted that documents in the record provided with the applicant's Form I-589 application indicated that he resided in India until 1986. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following:

- An affidavit from [REDACTED] dated April 10, 2006. In this affidavit, the affiant states that he has resided in the United States since 1979. He asserts that he has personally known the applicant since July 1981 and states that he met the applicant at an Indian Society Picnic. He states that after that time he saw the applicant, "every now and then." He states that he saw the applicant on a yearly basis at a picnic organized in July or August and that he saw the applicant at a marriage ceremony in 1983. Though the affiant asserts that he has resided in the United States since 1979, he failed to submit evidence as proof that he resided continuously in the United States for the duration of the requisite period. He further states that he saw the applicant every now and then, but does not specify the frequency with which he saw the applicant during the requisite period. Because it is not clear how frequently the affiant saw the applicant during the requisite period, and because testimony in this affidavit conflicts with what the applicant showed on his Forms I-589 and G-325A and in his testimony given pursuant to his filing for asylum, little weight can be accorded to this affidavit as proof that the applicant resided in the United States continuously for the duration of the requisite period.
- An affidavit from [REDACTED] dated April 7, 2006. Here, the affiant states that he has resided in the United States since 1970 and that he first met the applicant in October 1981 at an Indian Cultural Festival. He states that he saw the applicant from time to time during the requisite period in 1981 and then regularly during the requisite period. Here, though the affiant states that he resided continuously in the United States for the duration of the requisite period, he does not submit evidence that proves that he did so. Because this affidavit contains testimony that is not consistent with other evidence in the record, very minimal weight can be accorded to this affidavit as proof that the applicant resided continuously in the United States for the duration of the requisite period.
- A statement from the applicant, prepared by his attorney, dated April 10, 2006. In this statement, the applicant, through his attorney, asserts that the affidavits he submitted establish that he resided

in the United States for the duration of the requisite period. He states that he only had two absences, during June 1985 and June 1987. It is noted here that photocopies of the applicant's passport found in the record indicate that the applicant was in India in May 1986. He goes on to say that he misrepresented the facts of his physical presence in India on his Form G-325A and states that he has filed a Form I-690 seeking to waive this misrepresentation. As was previously noted, though a Form I-690 was submitted to CIS, it was filed with regards to the applicant's voluntary departure in 1989. As was also previously noted, this waiver was denied. He asserts that he has proven that he resided continuously in the United States by a preponderance of the evidence.

In denying the applicant, the director noted that though her office received the additional evidence as noted above in response to her NOID, this evidence was not sufficient to overcome her reasons for denial. In saying this, the director noted the above and that information regarding the applicant's absences from the United States was not shown consistently in the affidavit from [REDACTED] and in the applicant's own statement submitted in response to the NOID. The director also noted that CIS was not able to contact the affiants at the telephone numbers they provided in their affidavits.

On appeal, the applicant furnishes a brief dated August 8, 2006 which mirrors the language of the response he provided to the director's Notice of Intent to Deny (NOID). The applicant did not provide additional evidence in support of his application with his appeal.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from individuals that contain testimony that conflicts with what the applicant showed as his addresses of residence and his employment during the requisite period on his Form G-325A submitted in 1988. He asserts that CIS should disregard these previously submitted documents on the basis that he misrepresented material facts to CIS at the time he submitted them. As the applicant is stating that he misrepresented material facts to CIS, doubt is cast on assertions he is making in support of this application.

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 documents in the record and his assertion that he has previously misrepresented material facts to CIS, 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.