

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

## PUBLIC COPY

41

FILE:

MSC 06 095 13688

Office: LOS ANGELES

Date: **JUL 23 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 "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. 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 January 3, 2006. The applicant was interviewed on November 28, 2006 in connection with his Form I-687. The director denied the application on December 5, 2006. On appeal, counsel for the applicant submits a brief.

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.* 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 through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on March 6, 1988. The applicant listed his addresses for the pertinent time period as: [REDACTED] La Habra, California from January 1980 to 1984; [REDACTED] Vernon Hills, Illinois, from April 1984 to 1985; and [REDACTED] Diamond Bar, California from March 1988 to September 1990. The applicant listed an absence from the United States from June 25, 1985 to March 6, 1988 to India to go to school. The applicant's birth date is March 17, 1987.

The record includes the following documentation regarding the applicant's location during the pertinent time periods:

- A certificate signed by the headmistress of the Blossoms S.T. English School certifying the applicant attended the school, located in Bombay, India in 1984 and 1985.
- The applicant's father's December 21, 2005 declaration wherein [REDACTED] declared: that he first came to the United States in 1977 on a visitor visa; that his wife and two children, including the applicant, came to the United States in 1980; that in 1985, his spouse traveled to India to take his children back to India to start their education; and that his son, the applicant, returned to the United States to stay permanently on March 6, 1988.
- A December 21, 2005 declaration signed by [REDACTED] who declares that she has known the applicant since November or December of 1981 through the applicant's father.
- A December 21, 2005 declaration signed by [REDACTED] who declares that she has known the applicant since 1981; that she met the applicant at a religious temple attended by the applicant and his parents; and that based on her personal relationship with the applicant she knows that he was in the United States from 1981 to present.

- A December 21, 2005 declaration signed by [REDACTED], M.D. who declares that the applicant lived at [REDACTED] Diamond Bar, California from March 6, 1988 to September 1990.
- A December 20, 2005 declaration signed by [REDACTED] who declares that the applicant lived at [REDACTED], Diamond Bar, California from March 6, 1988 to September 1990.

The record also includes the applicant's immunization records listing immunizations at the La Puente Health Center, in La Puente, California beginning on March 21, 1988.

On December 5, 2006, the director observed that the applicant at his November 28, 2006 interview confirmed that he first entered the United States in 1980 with his parents, returned to India in June of 1985 to go to school, and did not return to the United States until March 1988. The director concluded that the applicant did not continuously reside in an unlawful status, or have physical presence during the required period.

On appeal, counsel for the applicant asserts that Citizenship and Immigration Services (CIS) erred and should have: held that the applicant had continuous unlawful residence in the United States since before January 1, 1982; considered that the applicant was a minor during the statutory period and was dependent on his parents; and provided the applicant an opportunity to respond and resolve any inconsistency in the record.

Preliminarily, the AAO observes that the director was not required to issue a Notice of Intent to Deny (NOID) pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

The AAO also finds that whether the applicant was a minor and dependent on his parents during the statutory period or not, the applicant must still establish eligibility for this benefit including continuous residence in the United States in an unlawful status since prior to January 1, 1982 and through the date the applicant or his parents, if a minor, attempted to file the application. In addition, the applicant must establish continuous physical presence in the United States since November 6, 1986 through the date of attempting to file the application.

The AAO has reviewed the declarations and other documents submitted on the applicant's behalf and finds that only one of the declarations indicates that the applicant was in the United States during the 1985 to 1988 time period. The remaining declarations either confirm that the applicant resided outside the United States from 1985 to 1988 or confirm the applicant's presence in the United States after March 1988. The AAO thus, finds the declaration submitted by [REDACTED] not probative in this matter as it is inconsistent with the applicant's testimony and that of his father's testimony as well as other independent information in the record. A review of all the evidence of the record confirms that the applicant did not continuously reside in the United States in an unlawful status for the requisite time period. 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 evidence of record, it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

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