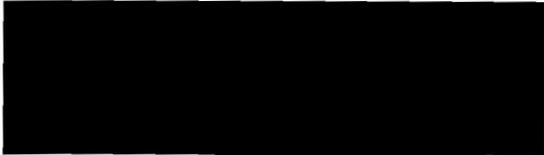




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FILE: [REDACTED]
MSC-05-237-12132

Office: CHICAGO

Date: **JUN 09 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:



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.

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, Chicago. The decision is now before the Administrative Appeals Office 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 there were inconsistencies in the record regarding the applicant's places of employment and addresses of residence during the requisite period. The director stated that these inconsistencies caused the applicant to fail to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. Because the applicant failed to meet his burden of proof, the director found that he was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Therefore, the director denied the application.

On appeal, the applicant asserts that the director did not give due weight to evidence he submitted in support of his application.

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) 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 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 applicant 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 25, 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 Jamaica, New York from January 1981 until August 1987; an unspecified address on “[REDACTED]” in Chicago, Illinois from July 1987 until October 1987; and [REDACTED] in Bollingbrook, Illinois from October 1987 to August 1989. It is noted that the applicant indicated that he was residing in New York until August 1987 but also began residing in Chicago in July 1987. It is further noted that at the time of his interview with a Citizenship and Immigration Services (CIS) officer, the applicant indicated he went back and forth between Chicago and New York in the 1980’s. At part #32 where the applicant was asked to list all of his absences from the United States, he

indicated that he had two absences during the requisite period. Here, he showed his first absence to have been from July to August 1983 when he went to India to see his family and his second absence to have been from July to August 1987 when he also went to India to see his family. At part #33 where the applicant was asked to list all of his employment in the United States since he first entered, he showed that during the requisite period he was employed as a newspaper vendor in New York from November 1981 until March 1983; as a gas attendant at Save More Gas in Bensonville, Illinois from March 1983 until June 1987; and for [REDACTED] as a carpenter helper in Bollingbrook, Illinois from August 1987 until October 1989. It is noted that during the four years that the applicant indicated he worked as a gas attendant in Illinois, he indicated that he was residing in New York.

Also in the Record is a Form I-687 submitted by the applicant to establish class membership in 1990. Here, the applicant showed his absences during the requisite period consistently with those he showed on his subsequently filed Form I-687. However, the applicant showed his dates of residence in Jamaica New York as being from November 1981 until March of 1983 rather than the dates he associated with that residence in his subsequently filed Form I-687, January 1981 until August 1987. He also showed he lived on North Sawyer in Chicago from March 1983 until August 1987. In his subsequently filed Form I-687 he showed he lived on North Sawyer for only three months, from July 1987 until October of that year.

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).

Here, the applicant submitted the following documents that are relevant to the requisite period in support of his application:

A letter from the Islamic Food and Nutrition Council of America that is dated April 28, 1983 and is not notarized. This letter acknowledges the receipt of 12 dollars from the applicant for membership in the association. Moreover, this letter states a Chicago address for the applicant while his Form I-687 indicates that he was living in New York at the time. Further, the applicant failed to indicate that he was a member of this organization when he was asked to list all affiliations, associations, clubs, organizations of which he was a member at part #31 of his Form I-687. This letter does not conform to the requirements for

attestations of organizations found at the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Therefore, this letter carries no weight as proof that he resided in the United States during the requisite period.

- A receipt from the Message of Islam that is dated June 6, 1981 and is not notarized. This letter acknowledges receipt of ten dollars from the applicant to support a radio program titled, "The Message of Islam." However, this letter does not state that the applicant was residing in the United States at the time he made this donation. Therefore, this letter carries no weight as evidence that he resided in the United States during the requisite period.
- A letter from the Muslim Community Center that is dated December 2, 1981 and is not notarized. This letter thanks the applicant for a contribution of 15 dollars. Though this letter bears the applicant's name and an address of residence in the United States, the address associated with the applicant on this letter shows him residing at an address in Chicago that the applicant did not state he ever resided at on his Form I-687. Further, the applicant indicated that he resided in New York in 1981 on his Form I-687.
- A letter from Syndicate Bank in Manipal, Karnataka State, India. This letter is dated April 10, 1982 and is not notarized. This letter thanks the applicant for his interest in opening a bank account. The letter lists the applicant's address in the United States care of another individual in "Boling Brook, Illinois." It is noted that the applicant indicated he resided in Jamaica, New York in 1982. Because this letter does not show that its sender personally knew that the applicant resided in the United States at the time the letter was sent, it carries no weight as proof that the applicant resided in the United States during the requisite period.
- A letter from the Woodhaven Smile Center that is dated June 5, 2003 and is not notarized. This letter states that the applicant was seen by [REDACTED] in that doctor's office in Woodhaven, New York on June 5, 2003. Though this letter asserts that the applicant began as a patient with this dentist in November 1984, it was not submitted with medical records. This letter fails to indicate how the doctor's office was able to verify the applicant's 1984 start date as a patient nor does it indicate the frequency with which the applicant went to this dentist. Further, the declarant does not indicate that he or she knows that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on June 5, 2003. In this affidavit, the affiant states he has known the applicant since 1982. He goes on to say the applicant left the United States on December 1984 and returned in January 1985 and that he left for a second time sometime in 1986. He states that the applicant returned from this absence in August 1986. It is noted here that the applicant showed his absences from the United States during the requisite period to have been from July to August 1983 and also from July to August 1987. Therefore, this affiant has provided testimony that is not consistent with what the applicant stated on his Form I-687. This casts doubt on whether the applicant has accurately represented his absences from the United States to CIS. The affiant goes on to say that he

knew of the applicant's absences from the United States because he helped the applicant by providing him with transportation to and from his job at Woodhaven Lotto and News in Woodhaven, New York. It is noted here that the applicant did not indicate on his Form I-687 that he ever worked for Woodhaven Lotto and News. This casts doubt on whether the applicant has accurately represented his employment in the United States to CIS.

- An affidavit from [REDACTED] that was notarized on August 30, 2005. In this affidavit, the affiant states that he has known the applicant since 1982. Here, he fails to indicate where he met the applicant or whether it was in the United States. He goes on to say that he knows the applicant has been residing continuously in the United States since 1982. Here, the affiant fails to provide evidence that he himself resided in the United States during the requisite period. While he claims to know the applicant because they attended the same unnamed community center, this affiant does not provide specific details regarding the applicant's residence in the United States during the requisite period. The affiant states he knows the applicant was absent from the United States from July to August 1983; from December 1984 to January 1985; and then from July to August 1986. It is noted here that this is not consistent with what the applicant stated on his Form I-687 regarding his absences. This casts doubt on whether the applicant has accurately represented his absences from the United States to CIS.
- An affidavit from [REDACTED] that was notarized on August 30, 2005. In this affidavit, the affiant states that he has known the applicant since 1982. However, he does not provide specific details regarding the applicant's purported residence in the United States during the requisite period. Although he claims that the applicant worked with him "all the time," he fails to indicate where he met the applicant or whether it was in the United States. He goes on to say that he knows the applicant has been residing continuously in the United States since 1982. He states he knows the applicant was absent from the United States from July to August 1983; from December 1984 to January 1985; and then from July to August 1986. It is noted that this is not consistent with what the applicant stated on his Form I-687 regarding his absences. This casts doubt on whether the applicant has accurately represented his absences from the United States to CIS.
- A certificate issued to the applicant in May 1988 that the record shows was for work done in 1987. This award was presented to the applicant by the Chicago Department of Health Nutrition Services. This certificate shows the applicant completed training as a WIC volunteer.
- A WIC volunteer information sheet showing that on September 30, 1987 the applicant indicated he would volunteer with WIC.
- Photocopies of Passport [REDACTED]. It is noted that page seven of this passport indicates that the applicant was issued a B-1/B-2 visa by the United States consulate in Madras, India in June 1988. It is noted here that the applicant did not indicate he was absent from the United

States in June 1988 on his Form I-687. This casts doubt on whether the applicant has accurately and completely indicated his absences from the United States during and subsequent to the requisite period to CIS.

- Also in the record is an employment verification letter from [REDACTED] who states that the applicant was the manager of Woodhaven Lotto and News Company from 1982 to 1989. It is noted here that the applicant did not show he ever worked for Woodhaven Lotto and News Company on his Form I-687. This inconsistency casts doubt on whether the applicant has accurately represented his employment during the requisite period to CIS.

It is noted that the applicant has submitted documents pertaining to his residence in years subsequent to the requisite period. However, the issue here is whether the applicant has submitted sufficient credible and probative documentation to establish that he resided continuously in the United States for the duration of the requisite period. Documents proving the applicant's residence subsequent to that time are not relevant for this proceeding.

The director denied the application for temporary residence on May 25, 2006. In his decision, the director noted the numerous inconsistencies in the record regarding the applicant's addresses of residence and places of employment and found that they cast doubt on his claim of having resided continuously in the United States for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the director did not give due weight to the evidence the applicant submitted in support of his application. The applicant did not submit additional evidence in support of his application with his appeal.

Upon review, the AAO finds that the applicant has provided inconsistent evidence regarding his address of residence, his employment and his absences from the United States during the requisite period, as noted above. This casts doubt on the credibility of the documents submitted by this applicant. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has failed to provide any explanation or clarification of the many inconsistencies in the record.

The absence of credible, consistent documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record regarding his employment, his addresses of residence and his absences from the United States, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded

that he 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.

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