

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

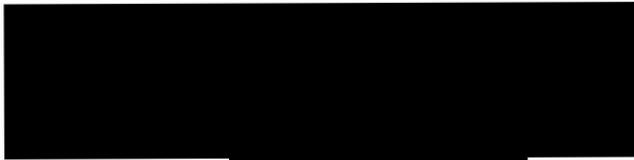
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [REDACTED]
MSC-05-141-10458

Office: NEW YORK

Date: **MAR 31 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.

for *Michael T. Kelly*
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, on February 18, 2005 (together, the I-687 Application). 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 noting that “the information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A indicating that he would submit a brief within 30 calendar days. The applicant did not submit any additional evidence along with the Form I-694, but stated on the Form I-694 that he would try to get more evidence from his “home country” that proves that he lived in the United States from 1981 - 1987. On November 6, 2006, the applicant submitted four color photocopies of post-marked envelopes addressed to the applicant at various addresses in the State of New York from individuals in Sri Lanka. As of this date, the AAO has not received a brief or any additional evidence from the applicant. Therefore, the record is complete.

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).

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 demonstrate that he entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 18, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] Corona, New York, from October 1981 to January 1983. At part #33, he listed his first employment in the United States as part-time waiter for [REDACTED] Indian Restaurant in New York, New York, beginning in 2000.¹ At part #32, the applicant listed two absences from the United States since entry. The first absence was a visit to Sri Lanka from March 1987 to March 1987. The second absence was again, a visit to Sri Lanka from which the applicant returned on August 2000.² The applicant did not list any affiliations or association at part #31.

The applicant has provided several notarized statements, copies of two bank statements, a visitor's visa, a copy of a Form I-94 card with an entry date of August 14, 2000, a copy of an Employment Authorization Card issued on August 17, 2005, a copy of a New York driver's license issued on July 2, 2005, a revised Form I-687, and four color photocopies of post-marked envelopes addressed to the applicant. Some of the evidence submitted indicates that the applicant resided in the United States after his entry on August 14, 2000 with a visitor's visa and is not probative of residence before that date. The following evidence relates to the requisite period:

- Two notarized statements from [REDACTED] dated September 27, 2005 and April 14, 2006. In his statements, [REDACTED] states that he has lived in the United States since 1959 and has known the applicant since 1981. He also states that the applicant was a Buddhist Monk and lived with his Master in the United States. [REDACTED] states that while the applicant was a young boy, "we played together and exchanged our ideas." He states that the applicant did not attend school because he was a Buddhist Monk. In his April 14, 2006 statement, [REDACTED] adds that "during the period [of] January 1982 to May 1988, while the applicant was living in the United States, he was discouraged or turned back from applying for the late amnesty sometime in the period between January 1982 and the date the application was made. I am aware of this because [the applicant] traveled outside [of] the U.S.A. in 1988." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial

¹ On the Form I-687 submitted by the applicant on February 18, 2005, the applicant states that he worked as a waiter at the restaurant from "4/2000 to 3/2000." On the revised Form I-687, dated and signed by the applicant on December 20, 2005, the applicant states that he worked from September 2000 to April 2001.

² On the Form I-687 submitted by the applicant on February 18, 2005, the applicant states that he visited Sri Lanka from "5/2000 to 8/2000." On the revised Form I-687, dated and signed by the applicant on December 20, 2005, the applicant states that he visited Sri Lanka from May 1994 to August 2000.

acquaintance with the applicant, or how frequently he had contact with the applicant. Furthermore, the declarant states that the applicant traveled outside of the United States in 1988; however, there is no mention on the Form I-687 of an absence from the United States in 1988. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- Two notarized statements from [REDACTED] dated October 30, 2005 and April 9, 2006. In his statements, [REDACTED] states that he is a United States citizen and lives at [REDACTED] Staten Island, NY 10310. He states that he met the applicant while the declarant was a high school student. He also states that the applicant did not attend school because he was a Buddhist Monk. In both statements, [REDACTED] adds that the applicant worked as a cleaner. However, the applicant does not mention employment as a cleaner on the Form I-687. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized statement from [REDACTED] dated December 20, 2005. In his statement, [REDACTED] states that he has known the applicant since the summer of 1981. He states that he met the applicant at the Buddhist Temple and that his father invited the applicant and his master to stay in one of the rooms in his family's apartment at [REDACTED], Corona, NY 11368. [REDACTED] states that his father "took care of all of the financial requirements as a respect to a Buddhist monk." Although the declarant states that he has known the applicant since 1981 and that the applicant lived with his family, the statement does not supply enough details to lend credibility to an 18-year relationship with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized statement from [REDACTED] dated February 10, 2005. In his statement, [REDACTED] states that he has known the applicant since 1987. He states that he is close to the applicant and that he works with the applicant. Although the declarant states that he has known the applicant since 1987 and that he works with the applicant, the statement does not supply enough details to lend credibility to an 18-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1987, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has

minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized statement from [REDACTED] dated February 11, 2005. In his statement, M [REDACTED] states that he has known the applicant since 1987. He states that he is close to the applicant and that he works with the applicant. Although the declarant states that he has known the applicant since 1987 and that he works with the applicant, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1987, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- Four color photocopies of post-marked envelopes addressed to the applicant at various addresses in the State of New York from individuals in Sri Lanka. The envelopes are dated 1981, 1984, 1986, and 1987. Although the applicant's name is written on these envelopes, they have minimal weight as evidence of residence.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The record indicates that the applicant entered the United States with a valid visa on August 14, 2000, but the evidence submitted does not establish that he resided in the United States before that date.

The remaining evidence in the record is comprised of the applicant's statements, in which he claims to have entered the United States on August 10, 1981 through the Canadian border and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record; the record indicates that the applicant entered the United States with a valid visa August 14, 2000, but the evidence submitted does not merit a conclusion that he resided in the United States before that date.

The director issued a notice of intent to deny (NOID) on March 17, 2006 and denied the application for temporary residence on July 28, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant submitted four color photocopies of post-marked envelopes addressed to the applicant at various addresses in the State of New York from individuals in Sri Lanka. As stated above, the envelopes have minimal probative value as evidence in support of the applicant's claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 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.

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