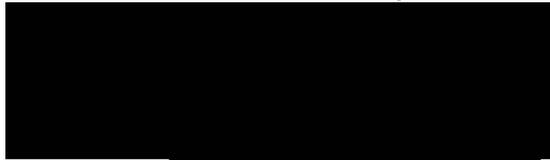




U.S. Citizenship
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FILE: 
MSC 04 316 10087

Office: NEW YORK

Date: **MAY 12 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: SELF-REPRESENTED

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.

For 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, and 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. While the AAO concurs in this overall conclusion, it is noted that the director's underlying analysis placed undue emphasis on the applicant's inability to provide documentation of his entry into the United States. As subsequently pointed out by the applicant on appeal, it is unreasonable to expect an alien to provide valid documentation of an unlawful act, i.e., an entry without inspection. As such, the director's finding in this regard is hereby withdrawn, as it has no bearing in determining the applicant's statutory eligibility for the immigration benefit sought. Notwithstanding the director's error, the overall 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 was correct and will be affirmed.

On appeal, the applicant disputes the director's decision and provides an additional statement and documentation in support of 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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

In support of his claim regarding his residence in the United States during the statutory period, the applicant submitted the following documentation:

1. An affidavit dated April 16, 2004 from [REDACTED] who claimed that he resided with the applicant and his father from July 1981 until March 1985 at the two addresses listed in No. 30 of the applicant's Form I-687. The affiant explained that both apartments were in his name as the applicant and his father were unlawfully present in the United States during those years. The affiant also claimed that he got the applicant a job at BBQ where the applicant was employed between January 1985 and March 1986. It is noted that this affiant failed to provide a phone number where he can be reached for further verification of the information provided in his written statement. As such, this statement will be given minimal weight as evidence of the applicant's unlawful presence in the United States during the relevant time period.
2. An affidavit dated July 15, 2004 from [REDACTED] who claimed to have known the applicant's father since their employment at the same travel agency in India. The affiant claimed that he was aware of the applicant's departure and ultimate arrival in the United

States. However, he did not identify the date of his own arrival to the United States, which appears to have been later than the alleged arrival of the applicant and his father. The affiant provided the list of the applicant's residences in the United States from August 1981 through May 1993, basing his knowledge of these addresses upon letters, post cards, and gifts he purportedly received from the applicant. However, the affiant did not provide any of the letters or post cards he purportedly received, nor did he specify his own date of entry into the United States. As such, the affiant failed to establish the basis for his claimed knowledge of the applicant's residence in the United States during the statutory period. Furthermore, the affiant failed to provide a phone number where he may be reached for verification of the information he provided. As such, this statement will be given minimal weight as evidence of the applicant's unlawful presence in the United States during the relevant time period.

3. An affidavit dated August 6, 2004 from [REDACTED] who claimed that he hired the applicant to work for Electronics of Queens in April 1986 as a floor person. This affiant also claimed that he visited the applicant's home on several occasions and provided the applicant's residential addresses from April 1985 through May 1993. It is noted, however, that the affiant did not claim to have known the applicant in 1985. Rather, he indicated that he became acquainted with the applicant when he hired him in April 1986 and, therefore could not have had personal first-hand knowledge of where the applicant was residing one year prior to his first having met the applicant. Lastly, 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, this employer did not provide the exact periods of employment, except to state the start date of the alleged employment, and did not indicate whether the applicant's information was obtained from official company records. As such, this employment verification letter is deficient and can be afforded only minimal weight as evidence of the applicant's residence in the United States during the relevant time period.
4. A letter dated August 6, 2004 from [REDACTED], pandit at Temple of Sri Krishna. Mr. [REDACTED] claimed that the applicant has been a parishioner and registered member of this temple since May 1985 and further claimed to have had personal knowledge of the applicant's residence in the United States since 1981. With regard to the claimed membership of Temple of Sri Krishna, the applicant did not list this establishment in No. 31 of his Form I-687 where he listed his membership in other religious establishments. As such, [REDACTED] claim is inconsistent with information provided by the applicant himself. Additionally, with regard to [REDACTED] personal knowledge of the applicant, he failed to provide the month during which he purportedly first met the applicant. Given that the applicant's purported arrival to the United States was not until July 1981, the month of [REDACTED]'s claimed first encounter with the applicant is highly relevant information.

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Lastly, ██████████ failed to comply with 8 C.F.R. § 245a.2(d)(3)(v), which requires that the official signing the letter provide the applicant's address during the time period of the purported membership. Moreover, the affiant failed to explain how he came to have personal knowledge of the applicant's residence in the United States since 1981 if the applicant did not become a parishioner at the temple until May 1985. Therefore, based on the deficiencies discussed above, this letter will be afforded minimal evidentiary weight.

5. A notarized self-employed statement of income dated August 15, 1985 from the Bellevue Hospital Center identifying the applicant, his date of birth, and his income. It is noted, however, that while the statement is notarized and includes the notary's signature, it does not include a signature from an official of Bellevue Hospital Center. Without a signature from a Bellevue official, this statement will be afforded minimal probative value as a contemporaneous document, as anyone, including the applicant, could have completed the form and filled in the necessary information. Additionally, the applicant's address as it appears in this statement is inconsistent with what the applicant claimed as his address in August 1985. Namely, the statement shows the applicant's address as ██████████, ██████████. However, according to the information provided by the applicant in No. 30 of his Form I-687, he resided at ██████████ from April 1985 to June 1986. While the applicant claims to have resided in Apt. 1R, that apartment was located at ██████████ and such residence allegedly took place from July 1986 to May 1993. Lastly, while the AAO acknowledges that this statement contains a notary stamp, the stamp appears to be a photocopy, not an original. Furthermore, a notary stamp does not assure the veracity of the information in any document. Rather, it assures the reader that the person signing the document is who he/she claims to be. In the present matter, the document in question contains no signature. As such, the AAO questions the validity of a notary stamp that appears on an incomplete document.
6. A letter dated September 8, 1987 from ██████████ the proprietor of Touch of India, claiming that the applicant was a counter helper at this establishment from January 1987 through the date on the letter at a rate of \$200 per week. It is noted that this letter is not in compliance with 8 C.F.R. § 245a.2(d)(3)(i), which requires that the employer provide the dates of employment and indicate whether the information was obtained from company records. Here, the employer appears to have indicated that the applicant's employment was ongoing through the date on the letter. However, in No. 33 of the Form I-687, the applicant claimed that he was employed at Touch of India until August 1987. The applicant also claimed that he was employed as a kitchen helper, not a counter person, and claimed that he was paid at a rate of \$275 per week, not \$200 per week as claimed in the employment letter. As there is no information as to the existence of employment records, the claims made in the employment letter have little probative value.
7. A letter dated July 12, 2004 from ██████████, the vice president of ██████████, who claimed that the applicant has been a member of the organization since April 25, 1986. However, Mr. ██████████ failed to provide the applicant's residential address(es) during the time period of the

claimed membership as required by 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, even though [REDACTED] claimed that he had personally known the applicant since 1981, he provided no details to lend credibility to his alleged 23-year relationship with the applicant. Accordingly, in light of the deficiencies cited above, [REDACTED] statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

8. A letter dated July 18, 1987 from United Airlines regarding the applicant's request for a refund.
9. An affidavit dated July 13, 2004 from the applicant's mother who attested to the applicant's departure from India in 1981 and his subsequent entry into the United States on July 10, 1981. While the affiant attested to a variety of other events that purportedly took place in the applicant's life during his alleged residence in the United States within the statutory period, it is clear that the affiant had no personal first-hand knowledge of these events, as she was residing in India during the time period in question. As such, her statements can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

On June 21, 2006, the district director issued a notice of her intent to deny the applicant's Form I-687, finding that the documentation listed above was deficient and could not be deemed sufficient evidence of the applicant's residence in the United States during the statutory period.

In response, the applicant maintained his claimed eligibility in a letter dated July 17, 2006 and supplemented the record with four additional affidavits: 1) an affidavit dated July 10, 2006 from [REDACTED]; 2) an affidavit dated July 11, 2006 from [REDACTED]; and 3) two affidavits dated July 13, 2006 from [REDACTED] and [REDACTED] respectively. However, these affidavits failed to overcome the adverse findings cited by the district director. Although [REDACTED] and [REDACTED] both claimed to have known the applicant since 1981 and referred to the applicant's alleged employment in the restaurant industry, neither affiant provided details that would lend credibility their alleged 25-year relationships with the applicant. Neither of the two remaining affiants claimed to have known the applicant since the commencement of the statutory period. Specifically, [REDACTED] claimed that he first met the applicant in 1984 and [REDACTED] claimed that he first met the applicant in 1987. While Mr. [REDACTED] claimed to have employed the applicant on a per diem basis, he did not specify the dates of such employment or discuss the existence of employment records or the origin of the information he provided in his affidavit. Moreover, the applicant did not include [REDACTED] on the list of employers as provided in No. 33 of the Form I-687.

On September 21, 2006, the district director denied the applicant's Form I-687, concluding that the applicant failed to provide adequate corroborating evidence in support of his claim. The director specifically noted that Electronics of Queens Inc., for whom the applicant claimed to have worked from April to December of 1986, did not file documents with the Department of State establishing its existence until January 19, 1996, thereby undermining the credibility of the claim regarding this alleged employment.

On appeal, the applicant addresses this discrepancy by explaining that he made a typographical error on his Form I-687. However, in the chronological list of employers as provided in No. 33 of the Form I-687, the applicant listed the job with Electronics of Queens, Inc. between his alleged employers in August 1987 and March 1986, thus indicating that the information provided was not the result of a typographical error. Moreover, the record also contains an affidavit from [REDACTED] attesting to the applicant's purported employment during the time period specified by the applicant in No. 33 of the Form I-687. As such, the applicant's explanation that a typographical error was made on his application essentially nullifies the claims made by [REDACTED] as well. 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). The applicant's explanation in the present matter is not credible. Furthermore, the information introduced in the district director's decision further undermines the applicant's credibility and, consequently, the validity of his claim.

The applicant also supplemented the record with additional documents. Among such documents is a letter, purportedly dated December 9, 1981 from Bellevue Hospital Center indicating that the applicant was treated for a tooth infection. Although the letter contains a signature from [REDACTED] in a random place at the bottom of the document, there is no signature from the treating physician, nor is there any indication as to who [REDACTED] is and what position he assumed within Bellevue Hospital Center such that he gained access to the applicant's alleged dental records.

Next, the applicant provided a letter dated November 27, 2005 from [REDACTED] who claimed that he came to the United States prior to 1982 and had known the applicant since prior to the commencement of the statutory period. Although [REDACTED] claimed to have the requisite knowledge of the applicant's residence, he provided no details to lend credibility to his alleged 25 year relationship with the applicant. Moreover, in light of the date of the applicant's claimed arrival to the United States and the date of [REDACTED] letter, it is unclear how he could have known the applicant for over 25 years.

The applicant also provided a letter dated December 5, 2005 from [REDACTED] who claimed that she first came to the United States in 1976 to visit her sons. Although she claimed that she met the applicant prior to 1982, she failed to state the length of her visit to explain how her temporary stay in the United States five years prior to the applicant's arrival could have resulted in their meeting. Although [REDACTED] also claimed that the applicant discussed the issue of legal status with her, it is unclear when these discussions took place, as the applicant was only ten years old at the time of his initial arrival. In general, [REDACTED] has not provided the necessary information to lend credibility to her own statements or to corroborate the applicant's claim.

Lastly, the applicant has provided an incomplete apartment lease consisting of the first page where the applicant's father, mother, and the applicant himself are named as the tenants of a residence at [REDACTED] where the lease term commenced on July 1, 1981 and ended on June 30, 1982. However, this document appears to have been altered and is entirely inconsistent with other documentation on record. First, according to the applicant's mother's affidavit, the applicant did not arrive to the United States until July 10, 1981 and was only accompanied by his father, not by his mother. The lease page presented by

the applicant shows a lease term that commenced prior to the applicant's purported arrival to the United States and suggests that the applicant's mother was residing at this residence with him. In a letter dated July 17, 2006, written by the applicant himself, the applicant claimed that he arrived in the United States on July 7, 1981. Thus, both the applicant's own statement and the statement from his mother are inconsistent with the lease term in the altered lease page provided on appeal. Second, [REDACTED] whose affidavit was provided in response to the notice of intent to deny, claimed that the applicant had his father come to stay with him upon their arrival to the United States. Although that affiant did not provide the address where he resided in 1981, he clearly indicated that the residence where the applicant resided belonged to him, not to the applicant and his father. Third, the lease term on the lease is inconsistent with the information provided by the applicant in No. 30 of his Form I-687. Namely, the applicant indicated that he lived at [REDACTED] from the time of his arrival until December 1981. Thus, combined, these considerable discrepancies give rise to serious doubt as to the validity of what the applicant attempts to pass off as a contemporaneous document. Moreover, the applicant's submission of a document whose credibility is so highly suspect, further detracts from the applicant's own credibility and the credibility of his claim. It is noted that 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. *Id.*

In summary, the applicant has provided only one credible contemporaneous document, but one which does not establish the applicant's residence in the United States at the time the statutory period commenced. Moreover, the applicant has presented a number of non-contemporaneous documents that are deficient, and even inconsistent, with the applicant's claim.

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 his applications 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 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-*, 20 I&N Dec. 77. 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.