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FILE: [REDACTED]  
MSC 05 230 11139

Office: NEW YORK

Date: **MAY 23 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.

  
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 that 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. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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 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).

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, 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 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 reflects that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 18, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he resided at 367 [REDACTED] New York, New York from July 1980 until June 1985, and at [REDACTED] Harrison, New Jersey from July 1985 until December 1989. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he was employed by Fang Hing Sportwear Corporation from September 1980 until August 1985, and at Kam Mun Sportwear Inc. from September 1985 until December 1988. He listed no affiliations or organizations.

The applicant's administrative record also contains a Form I-589 Application for Asylum signed by the applicant on November 30, 1994. In connection with this application the applicant submitted a Form G-325A Biographic Information in which he indicated that he resided in Malaysia until September 1990. The record contains fingerprints, photographs and biographic data identifying the applicant.

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 has not provided any explanation regarding the inconsistent information provided on his 1994 asylum application and his 2005 legalization application, apart from claiming that he did not file the asylum application. The inconsistency casts doubt on the reliability and sufficiency of the remaining evidence offered in support of the application.

In response to the director's Notice of Intent to Deny, dated May 3, 2006, the applicant stated that the asylum application contained in the record was not signed or submitted by him. He claims that "the dates quoted in the Notice coincide with a time in 1994 when he recalls visiting an office in Chinatown

which, . . . unscrupulously guaranteed employment cards to Chinese immigrants for a fee of \$200 . . . he remembers paying this fee and giving them a copy of his passport.” This is not credible because the asylum application contains specific biographic information including the applicant’s address in Malaysia until September 1990 and the applicant’s fingerprints and photographs that could not be gained from his passport alone.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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). 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. Since, by his own admission, the applicant resided in Malaysia until September 1990, and he has provided no further evidence or information that would resolve this inconsistency, the reliability of the remaining evidence in the record is significantly diminished.

In light of the aforementioned, the record reveals that the applicant has submitted the following evidence:

- A notarized letter dated May 25, 2006 from [REDACTED], who stated that she is a U.S. permanent resident residing in Brooklyn, New York, and living in the United States since April, 1980. She stated that she is a family friend of the applicant and has known him for 40 years. She indicates that she has remained close to the applicant since his arrival in the United States in July of 1980 and that they have spent holidays together. While [REDACTED] has identified the specific date and circumstances under which she met the applicant, her statement is lacking in details that would tend to lend credibility to her claim that she has personal knowledge of the applicant's residence in the United States, especially given their 40 year relationship. She does not provide any corroborating information regarding the applicant's residence in the United States during the 1982 to 1988 period, and her statements are inconsistent with the applicant’s own statements that he resided in Malaysia until September, 1990.
- A photocopy of an identification card from SGI USA with a date joined of 1984 and a date issued of 1992. There is no further information provided which would indicate how this card evidences the applicant’s presence in the United States during the requisite period.
- A photocopy of an identification card from NSA. This card does not identify the applicant in any way and will be given no weight.

- A notarized letter dated February 25, 2006 from [REDACTED] who stated that he is a naturalized U.S. citizen residing in Brooklyn, New York, and living in the United States since April, 1973. He stated that he met the applicant in November 1981, when they were introduced at a mutual friend's Thanksgiving dinner celebration. The declarant states that the applicant came to the United States in 1980 but does not provide any further details of the applicant's residency in the United States during the requisite period. The declarant's statements are also inconsistent with the applicant's stated residency in Malaysia until 1990. This letter will be given minimal weight.
- A notarized letter dated February 26, 2006 from [REDACTED] who stated that she is a naturalized U.S. citizen residing in New York, New York, and living in the United States since 1971. She stated that she met the applicant in 1981, when they were co-workers at Fang Hing Sportswear Corp. She also indicated that she was a member of SGI-USA, an organization dedicated to promoting the Buddhism of Nichiren Daishonin. While her statements do coincide with the applicant's I-687 legalization application in which he indicated that he worked for Fang Hing in 1981, the declarant does not offer any additional evidence of the applicant's residency in the United States for the duration of the requisite period. She merely states that she had conversations with the applicant about Buddhism, and that the applicant committed himself to her theology in 1984. She provides no employment records or organization documents to support her claims.
- A letter from [REDACTED], the applicant's father. The father indicates that he sent the applicant to the United States in July 1980 via Canada and that, in February 1984, he visited his son in the United States for three weeks. This evidence is offered to rebut the director's finding that the applicant was issued a United States B1/B2 visa in [REDACTED] in January 1984. The passport page reveals that the applicant entered the United States on February 5, 1984 and departed Malaysia in June 1984. As the director noted, these stamps indicate that the applicant was in Malaysia in January 1984 and traveled to the United States in February 1984 and that he returned to Malaysia prior to June 1984 to obtain the additional departure stamps. The applicant did not list any departures from the United States in 1984 on his legalization application. To explain this inconsistency, the applicant indicated that CIS "mistakenly took the fathers copy of his passport" as the applicant's. Because the applicant's name is not listed on each page of his passport it is not possible to determine if the applicant's passport was indeed confused with his father's passport resulting in a visa stamp from 1984 being incorrectly attributed to the applicant. However, even if the applicant was not the recipient of the visa stamp, and he did not in fact travel outside of the United States in 1984, and his father did visit him in the United States in 1984, the applicant has still not provided sufficient proof of eligibility to overcome the grounds for denial. The possible error, however, that the applicant raised on appeal, is duly noted.
- A notarized letter from [REDACTED], dated January 26, 2006. The declarant indicates that she is the owner of Fang Hing Sportswear Corp., now known as Belinda Sportswear Corp. She indicates that the applicant was employed with her company from September 1980 until August

1985. This declaration does not comport with the requirements of declarations from employers found at 8 C.F.R. § 245a.2 (d)(3). Specifically, it does not contain the applicant's address at the time of employment, a list of his duties, or any explanation as to whether the employment records are available. It is not accompanied by any contemporaneous evidence of the applicant's employment such as pay check stubs, payroll records or tax documents. Thus, it will be given no weight.

- A notarized letter from [REDACTED] who indicated that he met the applicant in 1983 at the SGI-USA New York Community Center where the applicant performed as part of a troupe from Malaysia. He indicated that he has "seen (the applicant) from time to time over the years," but provided no further evidence of the applicant's continuous residency in the United States for the duration of the statutory period. He did not state how frequently he saw the applicant during the requisite period (other than "from time to time"), nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. His statement will be given nominal weight.
- A letter from [REDACTED], the Director of the New York Culture Center SGI-USA. The declarant states that the applicant has been a member in good standing of this organization since August 5, 1984. He indicates that the applicant participates several times per month in discussion meetings and dances at the New Year's celebration every year. While the declarant's statements do lend credence to the applicant's claims of residency in the United States from 1984, the declarant does not provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. His statements also conflict with the applicant's asylum application in which he stated that he resided in Malaysia until September 1990. Moreover, the declarant did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.

On May 3, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the applicant's claim that he entered the United States in July 1980, but noted that he furnished no evidence of such an entry, nor did he provide evidence of his entry to Canada during the same period which would corroborate his statements. The director acknowledged the affidavits submitted by the applicant, but noted that they were not accompanied by proof that the affiants were in the United States during the statutory period. The director advised that credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof of a relationship between the affiant and the applicant.

The director advised the applicant that he had failed to submit documents that would establish by a preponderance of the evidence that he continuously resided in the United States for the duration of the requisite period, and afforded him 30 days in which to submit additional evidence in support of his application.

In response to the NOID, counsel for the applicant asserted that the applicant was present in the United States from July 1980 until the time of filing the application with the exception of a “brief, casual and innocent” trip abroad in July of 1986 of less than 45 days. By and through counsel, the applicant also claimed that he did not submit an asylum application in 1994. As the director correctly concluded, the asylum application contains the applicant’s fingerprints, his biographic data and his photograph. It is not credible that this evidence was submitted without the applicant’s knowledge.

The director denied the application on September 15, 2006. The director acknowledged the evidence submitted, but found that given the paucity of evidence in the record, the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant states that CIS erred in its decision and he reiterates that he had no knowledge of the filing of the asylum application in 1994 indicating that he thought that he was applying for a social security card.

Given the detail contained in the asylum application, the fact that it contains the applicant’s photograph, his fingerprints, as well as a detailed biographical history, his statements are not credible. Further, they detract from the credibility of the remaining evidence. Also, as discussed above, the evidence submitted is significantly lacking in detail and does not establish the applicant’s residence in the United States. This applicant has provided very limited contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his travel in and out of the United States during the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 reliance upon affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687 and asylum application, 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-*, *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.