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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

FILE: [REDACTED] Office: NEWARK Date: **OCT 03 2008**
MSC-06-101-20478

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:

[REDACTED]

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 "R. 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 Director, Newark. 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. 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 in his Notice of Intent to Deny (NOID), that previously submitted evidence in the record indicated that the applicant had resided in Bahrain for much of the requisite period. The director further stated that the applicant failed to prove he was eligible to adjust to temporary resident status. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Though the director noted that the applicant submitted additional evidence in response to the NOID, this evidence did not overcome the applicant's previous admission that he resided outside of the United States during the requisite period. Therefore, the director determined the applicant failed to satisfy his burden of proof and denied the application.

On appeal, counsel for the applicant states that the director failed to accord due weight to the evidence submitted by the applicant in response to the NOID.

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 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 9, 2006. At part #30 of the Form I-687 application, where applicants are asked to list the dates associated with their residences in the United States, the applicant indicated that during the requisite period he resided in Sunnyside, New York from July 1979 until February 1990. At part #31 where the applicant was asked to list all affiliations or associations with clubs, organizations, churches, unions and businesses, he did not indicate that he was a member of any such entities. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had been absent from the United States twice, from December 1987 to January 1988 and then from April 1988 to May 1988. He stated that he went to South Korea to visit family on both occasions. At part #33 where the applicant was asked to list all of his employment in the United

States, he stated that he had been a self-employed truck driver from August 1979 until December 2005.

Also in the record is a brief submitted by former counsel for the applicant in June 1997 with a motion to reopen a deportation order. In this brief, counsel states that the applicant began to work for a Korean company in 1983 on a project located in the country of Bahrain. With this brief, counsel submitted a photocopy of the identity pages of a passport previously issued to the applicant. This passport appears to indicate that it was issued to the applicant in Seoul, Korea on April 13, 1983. Counsel states that while the applicant was working in Bahrain, he obtained a visa to enter the United States, where he stayed for three weeks, beginning in January 1988. Counsel further states that the applicant did not return to the United States until May 1988. This indicates that during the requisite period, the applicant was present in the United States for approximately three weeks. This casts doubt on his current claim that he resided in the United States for the duration of the requisite period.

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).

The record contains a Form I-485 Application to Register Permanent Resident or Adjust Status submitted by the applicant in February 1995. The applicant submitted this form as a spouse of a lawful permanent resident. This Form I-485 offers further support that the applicant was in Bahrain for part of the requisite period. At part 3 section A of this form, the applicant indicated that he entered the United States using a visa # [REDACTED] that he obtained on January 9, 1988 in Bahrain. With this Form I-485 the applicant also submitted a Form G-325A Biographic Information on which he indicated he resided in Gwachun City, Korea from 1986 until 1988. This casts further doubt on the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period. In support of this Form I-485 application, the applicant submitted a copy of his family register, which indicates that he was married to a woman whose maiden name was [REDACTED] and that this marriage was reported on December 27, 1989.

Further in the record is a statement made by the applicant on February 16, 1996 in which he claimed that prior to January 1994 he had not been employed or earned any income in the United States. This casts doubt on the applicant's claim on his Form I-687 that he has been employed in the United States since 1979.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

In support of his application, the applicant submitted an affidavit notarized on September 17, 1991 in which he stated that he had been self-employed making deliveries to supermarkets since 1979. However, it is noted that the applicant previously submitted a statement on February 16, 1996 on which he stated that he had not been employed in the United States prior to 1994. This casts doubt on statements made by the applicant regarding his employment during the requisite period.

The applicant also submitted the following affidavits, all notarized on October 9, 1991, as evidence that he resided in the United States for the requisite period:

- An affidavit from [REDACTED], who states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1981 at a club and that he has been dating the applicant from that time until he signed the affidavit in October of 1991.
- An affidavit from [REDACTED], who states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1981 at a party and asserts that the applicant is a great dancer.
- An affidavit from [REDACTED] who states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1983 at a tennis tournament in Flushing Meadow Park.
- An affidavit from [REDACTED], who indicates that he is a dentist and states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1983 in his office. He asserts that the applicant is a good patient and that he is prompt.
- An affidavit from [REDACTED] who states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1982 in a bar and that he dated the applicant briefly and that they remain friends.

- An affidavit from [REDACTED] who states that he personally knows that the applicant resided in the United States since 1979. He states that he met the applicant in 1982 through a friend and that they conversed briefly and that they remain friends.
- An affidavit from [REDACTED] who states that he personally knows that the applicant resided in the United States since 1979. The affiant states that he met the applicant at a train station in 1982 and was very attracted to him. He asserts that he and the applicant are engaged and states that he loves the applicant. It is noted that the word “her” has been erased but can be seen under the word “him” each time the affiant referred to the applicant in the affidavit.
- An affidavit from [REDACTED] who states that he personally knows that the applicant resided in the United States since 1979. He states that he first met the applicant in 1981 through friends and that he sees the applicant when they go dancing.

Each of the affiants claims that they have personal knowledge that the applicant resided in the United States since 1979. However, each claims to have met him subsequent to 1979. The affiants could not have personal knowledge of the applicant’s residence before they met him. None of the affiants state the frequency with which they saw the applicant during the requisite period nor do they state whether there were periods of time when they did not see the applicant. It is further noted that though the applicant submitted affidavits indicating that as of October 1991, the applicant was dating [REDACTED] and was also engaged to [REDACTED], the record also contains previously noted evidence that as of December 27, 1989 he was married to a woman whose maiden name was [REDACTED]. The previously noted Form I-485 in the record indicates that he continued to be married to this same wife in 1995.

Further, the previously noted brief submitted by former counsel for the applicant in June 1997 indicates that the applicant first entered the United States in January 1988 and stayed for three weeks. This casts doubt on the claims made by the affiants regarding the applicant’s residence in the United States prior to that date.

It is noted that the applicant also submitted evidence of his residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to satisfy his burden of proving that he resided in the United States for the duration of the requisite period. Therefore, evidence that pertains to the applicant’s residence subsequent to that time is not relevant for this proceeding and is not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on December 11, 2006. In the NOID, the director noted the discrepancies between the applicant’s current claim that he maintained continuous residence in the United States for the duration of the requisite period and the previously noted 1997 brief in which counsel asserted that the applicant was residing outside of the United States until January 1988. The director also noted that the record contains a passport that was issued to him in Seoul, Korea on April 13, 1983. The director stated that this evidence in the

record indicated that the applicant did not reside in the United States during the requisite period. The director concluded by stating that he intended to deny the application because the applicant failed to prove that he was eligible to adjust to temporary resident status on that basis. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted the following evidence:

- A photocopy of an affidavit from [REDACTED] who states that he first entered the United States in 1982. He goes on to state that he worked with the applicant from 1983 until 1986 and then again from 1987 to 1997. He asserts that the applicant was a wholesale buyer for the Green Grocery and Supermarket at A.B. Shalom Produce Company in the Bronx, New York. The affiant also states that he and the applicant were members of the same church, the [REDACTED] Presbyterian Church in Sunnyside, New York. It is noted that the applicant did not indicate that he was a member of any churches on his Form I-687. It is further noted that the applicant has indicated that he was a delivery truck driver, rather than a buyer for grocery stores on his Form I-687. Because this affidavit is not consistent with other evidence in the record, it can be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period. It is not sufficient to overcome the applicant's previously submitted evidence that he did not reside in the United States for the duration of the requisite period.
- A photocopy of an affidavit from [REDACTED], who states that he entered the United States in 1976. The affiant states that he owned the A.B. Shalom Produce Company from 1981 to 1988 and that the applicant worked with him at that time as a wholesale buyer for the Green Grocery and Supermarket. He states that from December 1979 he and the applicant attended the same church, [REDACTED] Presbyterian Church in Sunnyside, New York and that the applicant got married in the church. It is noted that the applicant did not indicate that he was a member of any churches on his Form I-687. It is further noted that the applicant has indicated that he was a delivery truck driver, rather than a buyer for grocery stores on his Form I-687. Because this affidavit is not consistent with other evidence in the record, it can be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period. It is not sufficient to overcome the applicant's previously submitted evidence that he did not reside in the United States for the duration of the requisite period.

The director denied the application for temporary residence on January 23, 2007. In denying the application, the director noted the additional evidence received from the applicant, but stated that the evidence did not overcome the applicant's previous testimony that he resided outside of the United States during the requisite period.

On appeal, counsel for the applicant asserts that the director did not accord due weight to the evidence submitted by the applicant. Counsel asserts that the director did not consider the

evidence submitted by the applicant on appeal because the affidavits submitted were photocopies of the originals. Counsel goes on to state that the regulations do not specify that photocopied evidence cannot be submitted.

Counsel's assertions are not persuasive. Though the director noted that the applicant submitted photocopies of affidavits, he ultimately denied the application because he determined that the testimony in the affidavits did not overcome the applicant's own previously submitted testimony, in which he stated and presented evidence that he did not reside in the United States during the requisite period. Whether the applicant submitted photocopied or original documents would not change the existence of this previous testimony and other evidence in the record that indicates that the applicant did not reside in the United States for the duration of the requisite period as claimed. Further, the testimony in these affidavits is not consistent with testimony provided by the applicant on his Form I-687 regarding his employment during the requisite period.

In this case, the inconsistencies and contradictions in the record seriously detract from the credibility of the applicant's claim that he resided in the United States for the duration of the requisite 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 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.