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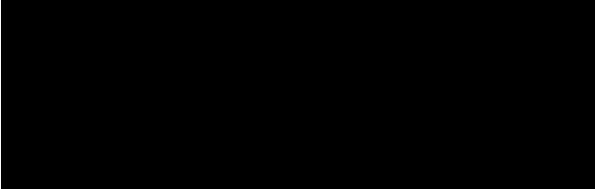
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [REDACTED]
MSC-05-132-10117

Office: NEW YORK

Date: **OCT 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:



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 ink, appearing to read "Robert P. 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 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. 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 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.

On appeal, the applicant asserts that he entered the United States in September 1981 and was continuously present in the United States until the day he was “turned down by the INS.” The applicant states that he was absent from the United States from August 10, 1987 until August 25, 1987. The applicant states that he is an undocumented alien and barely has enough documents. The applicant states that the affiants’ identification documents, affidavits and contact phone numbers are of great probative value. The applicant states that he was a paying boarder without any utility bills in his name. The applicant states that he has not paid any attention of keeping records or receipts other than the ones submitted. The applicant states that he did not have a Social Security Number and did not visit any hospitals because of his fear of illegality. The applicant states that his dental complications were taken care of by Fred L. Lane, DDS. The applicant asserts that he has established eligibility for temporary resident status. The applicant submits the following additional documentation:

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).

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 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 shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on February 9, 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 showed his first address in the United States to be at [REDACTED] Brooklyn, New York from September 1981 to December 1988. At part #33, he showed that during the requisite period he was self-employed in New York from October 1981 to February

1982 and employed with Citiline Contracting Inc., located in Brooklyn, New York, from March 1982 to March 1992.

The applicant submitted the following documentation:

- Several fill-in-the blank forms entitled “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarations.” The instructions on the forms request the applicant to “Fill in information below about the person who will sign the declaration for the applicant.” The applicant furnished completed forms on behalf of [REDACTED]

[REDACTED] and [REDACTED]. However, these individuals have not signed their respective forms. Therefore, these documents are without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- The aforementioned CSS/LULAC Legalization and Life Act Adjustment forms on behalf of [REDACTED] and [REDACTED]. These forms bear the signatures of the respective individuals, but are deficient for the following reasons:

- The declaration from [REDACTED] states that he first met the applicant in February 1982 while he was looking for construction labor. It states that during the requisite period, he would call the applicant to do freelance construction work for him from time to time. The declaration fails to convey how [REDACTED] dated his initial acquaintance with the applicant. It also fails to illustrate how frequently [REDACTED] was in contact with the applicant in the United States during the requisite period.
- The declaration from [REDACTED] states that he first met the applicant in October 1981 at his home. It states that during the requisite period they would meet almost everyday and were together during birthda arties, cultural events and “good foods.” The declaration fails to convey how [REDACTED] dated his initial acquaintance with the applicant. It also fails to convey any specific information on [REDACTED]’s purported daily contact with the applicant in the United States during the requisite period.

Given theses deficiencies, these declarations are of little probative value as evidence of the applicant’s residence in the United States during the requisite period.

- Identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED] respectively dated October 29, 2004, October 25, 2004 and September 24, 2004. The affidavit from [REDACTED] states that he first met the applicant in the United States in February 1982. The affidavit from [REDACTED] states that he first met the applicant in the United States in May 1982. The affidavit from [REDACTED] states that he first met the applicant in the United States in December 1981. These affidavits fail to provide any information on how the

affiants first became acquainted with the applicant, and how they dated their initial acquaintance with him. They also fail to describe the frequency of the affiants' contact with the applicant in the United States during the requisite period. Given these deficiencies, these affidavits are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- Copies of two envelopes addressed to the applicant at [REDACTED], Brooklyn, New York. The applicant indicated on his Form I-687 that he resided at this address during the requisite period. However, the postmarks on these envelopes are illegible. Given this deficiency, these envelopes are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], Executive Administrator Assistant, Masjid At-Taqwa, located in Brooklyn, New York. The letter states that the applicant has participated in the weekly Jum'aa prayer and has been a member of the community since 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations from religious organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these delineated guidelines. Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], President, Citiline Contracting Inc., located in Brooklyn, New York. This affidavit, dated October 10, 2004, states that the applicant has worked with him as a construction handyman since 1982 for 10 years. This affidavit fails to comply with the regulation for employer letters. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that employer letters must include the applicant's address at the time of employment; duties with the company; whether the information was taken from official company records; where such records are located; and whether CIS may have access to those records. If the records are unavailable, the employer should issue an affidavit form-letter stating that the records are unavailable and the reason they are unavailable. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit fails to comply with these delineated guidelines. Given this deficiency, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], General Secretary, Bangladesh Society Inc., New York, dated July 20, 2004. This letter states that per the organization's records, the applicant is a helpful person that has volunteered during many cultural and ceremonial events since 1985. As noted, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these delineated guidelines. Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated October 28, 2004. [REDACTED] states in his affidavit that the applicant is his friend and has been in the United States for a long time. This affidavit fails to specify the date that [REDACTED] first met the applicant in the United States. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated October 7, 2004. This affidavit states that the applicant arrived in the United States in September 1981 and then lived with him in his apartment until December 1988. This affidavit fails to convey how [REDACTED] first became acquainted with the applicant. Furthermore, it does not illustrate their relationship in the United States during the requisite period. There is no information on their living arrangement/agreement during the period they purportedly resided together. The affidavit also does not provide the apartment addresses where they purported resided together during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated June 10, 2005. This affidavit states that [REDACTED] has known the applicant since 1985. However, it does not convey how they first became acquainted with each other, and how he dated their initial acquaintance. Nor does it indicate whether they first became acquainted in the United States or abroad. Additionally, this affidavit provides no information on the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], dated May 14, 1991. This affidavit states that [REDACTED] has personal knowledge of the applicant's residence at [REDACTED] Brooklyn, New York from September 1981 to December 1988 and [REDACTED] Brooklyn, New York from January 1989 to present. It states that the applicant was his neighbor and worked for him on a daily basis. However, there is no indication that they were neighbors in the United States during the requisite period. Furthermore, the affidavit does not provide any information on the location, time period and type of employment the applicant engaged in for [REDACTED]. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A notarized letter from [REDACTED] General Secretary, Islamic Council of America Inc., located in New York, New York. This letter, dated July 17, 1990, states the organization has known the applicant since 1983 and he comes to the religious Mosque in Manhattan every Friday. As noted, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations by organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with any of these delineated

guidelines. Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On August 24, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant did not submit corroborating evidence of his entry into the United States in September 1981. The director further determined that the affidavits the applicant furnished appear to be neither credible nor amenable to verification. The director found that the affidavits do not include the affiants' contact phone numbers; proof that the affiants were in the United States during the requisite period; and proof of the affiants' direct personal knowledge of the events being attested. The director concluded that the applicant failed to submit credible documents that constitute by a preponderance of evidence his residence in the United States during the requisite period.

In rebuttal to the NOID, counsel issued a letter stating that he personally contacted the affiants and they verified the information. Counsel furnished the following additional documentation:

- Another affidavit from [REDACTED], dated September 12, 2005. This affidavit states that [REDACTED] has known the applicant since 1985. As with the previous affidavit from [REDACTED] this affidavit does not convey how he first became acquainted with the applicant, and how he dated their initial acquaintance. Nor does it indicate whether they first became acquainted in the United States or abroad. Additionally, this affidavit provides no information on the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Another affidavit from [REDACTED] President, City Line Contracting Inc.¹, located in Brooklyn, New York. This affidavit, dated September 9, 2005, states that the applicant was employed with [REDACTED] as a construction handyman for a long time. This affidavit fails to provide any additional information on the applicant's employment with City Line Contracting. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should include the applicant's address at the time of employment; exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from official company records; and where the records are located and whether the CIS may have access to the records. If the records are unavailable, the employer should issue an affidavit form-letter stating that the records are unavailable and the reason they are unavailable. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit fails to comply with these delineated guidelines. Given this deficiency, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

¹ It should be noted that the previous affidavit from [REDACTED] indicates that the name of his company is Citiline Contracting Inc.

- Another affidavit from S [REDACTED], dated September 8, 2005. This affidavit states that he has known the applicant since 1982. It states that they met at community meetings, family and relative parties, grocery stores and marketplaces. This affidavit fails to provide any information on how [REDACTED] first became acquainted with the applicant, and how he dated their initial acquaintance. Also, it does not indicate whether they first became acquainted in the United States or abroad. Furthermore, it does not detail the frequency of their contact in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On August 8, 2006, the director issued a Notice of Decision to deny the application. The director determined that the additional affidavits from [REDACTED] and [REDACTED] do not have the affiants' identity documents; proof that the affiants were in the United States during the requisite period; proof that there was a relationship between the applicant and affiant; and the affiants' contact phone numbers. The director determined that the applicant failed to establish that he has continuously resided in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding, and denied the application.

The director was correct in her decision to deny the application based on the applicant's failure to establish his continuous residence in the United States during the requisite period. However, there was an error in her analysis of the affidavits. Contrary to the director's determination, the affidavits contain the affiants' contact phone numbers, making them amenable to verification. Furthermore, the applicant furnished a copy of [REDACTED]'s New York State Driver License and the biographical page of [REDACTED] United States passport. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that he entered the United States in September 1981 and was continuously present in the United States until the day he was "turned down by the INS." The applicant states that he was absent from the United States from August 10, 1987 until August 25, 1987. The applicant states that he is an undocumented alien and barely has enough documents. The applicant states that the affiants' identification documents, affidavits and contact phone numbers are of great probative value. The applicant states that he was a paying boarder without any utility bills in his name. The applicant states that he has not paid any attention to keeping records or receipts other than the ones submitted. The applicant states that he did not have a Social Security Number and did not visit any hospitals because of his fear of illegality. The applicant states that his dental complications were taken care of by [REDACTED]. The applicant asserts that he has established eligibility for temporary resident status.

The applicant submits the following additional documentation:

- A copy of [REDACTED] New York State Driver License, issued March 24, 2004.
- An affidavit from [REDACTED] and a copy of his New York State Identification Card. This affidavit, dated August 29, 2006, provides that [REDACTED] has known the applicant since September 1981. It states that they first met at [REDACTED] Brooklyn, New York when the applicant came to him for shelter. The applicant indicated on his Form I-687 that he resided on the first floor of this building during the requisite period. However, this affidavit fails to indicate how [REDACTED] dated his first acquaintance with the applicant. It also fails to illustrate his relationship with the applicant in the United States during the requisite period. It is unclear whether he was the applicant's landlord, roommate or neighbor. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] and a copy of his New York State Benefit Identification Card. This affidavit, dated August 29, 2006, provides that [REDACTED] has known the applicant since November 1981. It states that they first met at [REDACTED] previous residence located at [REDACTED], Brooklyn, New York. This affidavit does not convey how [REDACTED] first became acquainted with the applicant. Nor does it convey how [REDACTED] dated his first acquaintance with the applicant. Furthermore, the affidavit does not illustrate the frequency of their contact in the United States during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Copies of three envelopes addressed to the applicant at [REDACTED] Brooklyn, New York. These envelopes bear identical postage stamps from Bangladesh. However, the postmarks on the envelopes are illegible. Furthermore, the applicant indicated on his Form I-687 that he resided at [REDACTED], Brooklyn, New York from January 1, 1989 to present. Since the applicant did not reside at this address during the requisite period, these envelopes are not relevant to this proceeding.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he provided sufficient evidence to establish that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, numerous documents that are either without any probative value or of little probative value. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is, at best, of minimal probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

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