



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC-06-060-10894

Office: CLEVELAND (COLUMBUS) Date: **SEP 02 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. 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* *Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Cleveland. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on November 29, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting that the applicant failed to provide tax returns or sales receipts for his business during the requisite period. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a brief, and receipts. On appeal, the applicant states that he has “documentary evidence in support of his application.” The applicant also states that he has proven his case “by a preponderance of evidence.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits and letters; copies of Bary & Company receipts; copies of cab fare receipts; a copy of the applicant's Ohio driver's license issued on January 5,

2006; a copy of the applicant's passport issued on January 8, 1988 in Colombo; a copy of the applicant's passport issued on January 28, 1998; copies of the applicant's visitor's visas issued in Colombo on February 3, 1988 and on September 1, 1988; copies of gem and jewelry show schedules and exhibitor listings from 2001 to 2003; copies of applications and license agreements for gem and jewelry shows dated 2002 to 2004; a copy of the applicant's undated exhibitor badge; copies of receipts, agreements, statements, and bills dated 2000 to 2003; and a copy of a fictitious business name statement for Bary Group PVT Ltd. dated March 20, 1996. The applicant's driver's license and passport are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- A statement on [REDACTED] letterhead signed by [REDACTED] dated September 12, 2006. Mr. [REDACTED] states that he has known the applicant and "participated in business dealings with [the applicant] in Los Angeles beginning in 1982." The declarant also states that "through the years [the applicant] has been to [the declarant's] office many times." Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the declarant does not indicate how he dates his first business dealings with the applicant in the United States or how frequently he had contact with the applicant. Further, the declarant provides no specific information about the applicant's residence and whereabouts during the requisite time period. In addition, the letter is not notarized and the declarant did not provide proof of his identity. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A statement on G.L.D.A. Inc. letterhead signed by [REDACTED] executive assistant, dated August 16, 2006. Ms. [REDACTED] states that the applicant "with Bary Gems Inc. has been to our show as a Tucson buyer from 1981 to 1987. [The applicant] joined our show as a[n] exhibitor in 1988 – 2001 at our downtown show in Tucson, Arizona. [The applicant] was with our Sri Lanka group." Although the declarant states that the applicant has attended the show as a buyer from 1981 to 1987, she does not provide the source of her information. In addition, the declarant does not state how often the applicant attended shows or the length of his attendance. Further, the declarant provides no specific information about the applicant's residence and whereabouts during the requisite time period. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A statement on Overland Gems, Inc. letterhead signed by [REDACTED], vice president, dated September 14, 2006. Ms. [REDACTED] states that the applicant “was in the United States in Los Angeles from 1982-1988 and that Overland Gems, Inc. was purchasing from [the applicant] during this time.” Although the declarant states that the applicant was in the United States from 1982 - 1988, she does not provide the source of her information. In addition, the declarant does not state how often Overland Gems, Inc. had business dealings with the applicant during the requisite time period. Further, the declarant provides no specific information about the applicant’s residence and whereabouts during the requisite time period. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized letter from [REDACTED] Mr. [REDACTED] states that he has known the applicant “since the early '80s after [the applicant] arrived from Mexico without a visa.” The affiant also states that he and the applicant “have had numerous business dealings since then.” Although the affiant states that he has known the applicant since the early '80s, the statement does not supply enough details to lend credibility to an at least 20-year relationship with the applicant. For instance, the affiant does not provide a year for when he first met the applicant, indicate how he dates his first business dealings with the applicant in the United States or how frequently he had contact with the applicant. Further, the affiant provides no specific information about the applicant’s entry into the United States, residence and whereabouts during the requisite time period. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated February 1, 2006. Mr. [REDACTED] states that he has known the applicant “for over 25 years.” The affiant also states that the applicant first approached him “in 1981 in Denver, Colorado to conduct business related to colored gem stones.” The affiant adds that he bought some stones from the applicant at that time and since then has been “regularly conducting business” with the applicant. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how he dates his first business dealings with the applicant in the United States or how frequently he had contact with the applicant. Further, the affiant provides no specific information about the applicant’s residence and whereabouts during the requisite time period. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- Copies of receipts from Bary & Company, “exporters of coloured stones, full lapidary service and jewellery [sic] manufacturers.” The address listed for Bary and Company is

in Sri Lanka. The receipts are dated February 23, 1981; June 15, 1981; March 10, 1982; June 18, 1982; May 19, 1983; September 19, 1984; and June 20, 1985. The receipts state that all of the items were paid for in cash and were hand delivered. All of the receipts were signed by the applicant. These receipts are inconsistent with the information in the applicant's Form I-687. In the Form I-687, the applicant stated that he was self-employed from August 1980 to February 1988. The applicant also stated in the Form I-687 that he worked for Bary & Co. as president from February 1988 to April 1996. Therefore, the applicant has submitted receipts for Bary & Company dated before the applicant began working for the company. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO notes that the receipts provide an address for the company in Sri Lanka and do not provide an address or phone number for Bary & Co. in the United States. Although receipts may indicate presence in the United States on the date issued, they will only be accorded minimal weight as evidence of residence in light of these discrepancies.

- Copies of cab fare receipts for the applicant. The receipts are dated December 24, 1980 and February 13, 1981. Although receipts may indicate presence in the United States on the date issued, they will only be accorded minimal weight as evidence of the applicant's residence in the United States.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in July 1980. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on January 11, 2006. The director denied the application for temporary residence on October 11, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that he has "documentary evidence in support of his application." The applicant also states that he has proven his case "by a preponderance of evidence." As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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