

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY

[Redacted]

FILE: [Redacted]
MSC-05-236-16732

Office: NEW YORK

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:

[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.

for Michael T. Keery
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, on May 24, 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 restaurants for which the applicant worked during the requisite period did not appear to be licensed businesses in the State of New York during the requisite time 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, evidence already in the record of proceeding and a photocopy of a page from a telephone book. On the Form I-694, counsel restates much of what he wrote in his April 8, 2006 letter in response to the director's notice of intent to deny. On appeal, counsel adds that because the restaurants have closed, the applicant is unable to provide information regarding the restaurants' business licenses in the State of New York. 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 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).

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; a copy of a page from a telephone book; a copy of the applicant's daughter's birth certificate indicating that she was born on March 29, 2002; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a letter from Citibank stating that the applicant opened two accounts in 2001; copies of the applicant's income tax returns; and other bills and statements. The applicant's birth certificate is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending Form I-687 Application as well as a prior Form I-687, dated December 29, 1989.

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 [name illegible] and dated December 7, 1989. The declarant states that the applicant was employed as a "chef assistant" from "December 20, 1981 until December 31, 1984." The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested). 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 [redacted] letterhead signed by [name illegible] and dated December 14, 1989. The declarant states that the applicant was employed as a "salad bar man" beginning on December 28, 1987. The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested). 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 [redacted] letterhead signed by [name illegible] and dated December 6, 1989. The declarant states that the applicant was employed as a "general helper" from

“January 16, 1984 until December 26, 1987.” The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant’s address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested). 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 form-letter on Our Lady of Sorrows Church letterhead dated December 6, 1989 and signed by [REDACTED]. The letter states that the applicant has been a member of the church since November 1981, attended church services on a regular basis, and was “personally known to our priests.” The applicant’s name and the date that he became a member are inserted into the blanks as appropriate. The letter fails to conform to regulatory guidelines in that it does not state the address where the applicant resided during the membership period; establish how the author knows the applicant; or state the origin of the information provided. *See* 8 C.F.R. § 245a.2(d)(3)(v). 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] dated December 19, 1989. The affiant states that she lives in Brooklyn, New York and that the applicant arrived in New York on “November 7, 1981.” The affiant also states that the applicant lived in her house and that she provided him with one dinner per day. The affiant states that the applicant lived in her house from “November 1981 until March 1988.” Although this information is consistent with the applicant’s Form I-687, the statement does not supply enough details to lend credibility to 7-year relationship with the applicant. For instance, the affiant does not indicate how she met the applicant, how she knows that the applicant arrived in New York on November 7, 1981, or how she dates the applicant’s arrival. The affiant does not describe the terms and conditions of the rental agreement, whether the rental arrangement was offered to others, and any details of the applicant’s life at her home. 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 form-letter affidavit from [REDACTED] dated December 16, 1989. The affiant states that he met the applicant at “a Christmas party held in 1981.” The affiant also states he and the applicant have attended different events since meeting and have become “very good friends.” The affidavit states that the affiant has “personal

knowledge” that the applicant resided at [REDACTED] Jackson Heights, New York from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. Although the affiant states that he has known the applicant since the 1981, the statement does not supply enough details to lend credibility to an at least 8-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, or how he had personal knowledge of the applicant’s addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant’s claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit from [REDACTED] dated December 18, 1989. The affiant states that he met the applicant “approximately in February 1984.” The affiant also states he was introduced to the applicant by a friend “at the Café 20 Restaurant.” The affiant states that he has “personal knowledge” that the applicant resided at [REDACTED] Jackson Heights, New York from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. The AAO notes that the affiant claims to have met the applicant in 1984, but does not explain how he has personal knowledge of the applicant’s residence before that date. 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). Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 8-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, or how he had personal knowledge of the applicant’s addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant’s claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized form-letter affidavit from [REDACTED] s. The affiant states that he met the applicant “about two years ago.” The affiant also states he met the applicant when the applicant was “hired at [REDACTED]” as a salad man. According to the applicant’s Form I-687, the applicant began working at the restaurant in December 1987. The affidavit states that the affiant has “personal knowledge” that the applicant resided at [REDACTED] Jackson Heights, New York from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. The AAO notes that

the affiant claims to have met the applicant in 1987, but does not explain how he has personal knowledge of the applicant's residence before that date. 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). Although the affiant states that he has known the applicant since 1987, the statement does not supply enough details to lend credibility to a 2-year relationship with the applicant. For instance, the affiant does not indicate how frequently he had contact with the applicant or how he had personal knowledge of the applicant's addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit from [REDACTED] dated December 18, 1989. The affiant states that he met the applicant "when he came to work at [REDACTED]. The affiant also states that he has known the applicant for "two years." The affidavit states that the affiant has "personal knowledge" that the applicant resided at [REDACTED] Jackson Heights, New York from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. The AAO notes that the affiant claims to have met the applicant in 1987, but does not explain how he has personal knowledge of the applicant's residence before that date. 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). Although the affiant states that he has known the applicant since the 1981, the statement does not supply enough details to lend credibility to a 2-year relationship with the applicant. For instance, the affiant does not indicate how frequently he had contact with the applicant or how he had personal knowledge of the applicant's addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized form-letter affidavit from [REDACTED] dated December 22, 1989. The affiant states that he met the applicant "in 1987 when he went to [REDACTED] looking for job." The affidavit states that the affiant has "personal knowledge" that the applicant resided at [REDACTED] Jackson Heights, New York

from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. The AAO notes that the affiant claims to have met the applicant in 1987, but does not explain how he has personal knowledge of the applicant's residence before that date. 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). Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 2-year relationship with the applicant. For instance, the affiant does not indicate how frequently he had contact with the applicant or how he had personal knowledge of the applicant's addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized form-letter affidavit from [REDACTED] dated December 18, 1989. The affiant states that he met the applicant "about two years ago." The affiant also states that he and the applicant are both "restaurant workers." The affidavit states that the affiant has "personal knowledge" that the applicant resided at [REDACTED] Jackson Heights, New York from March 1988 to the present and at [REDACTED] Brooklyn, New York from November 1981 to March 1988. The two addresses listed for the applicant are consistent with the Form I-687. The AAO notes that the affiant claims to have met the applicant in 1987, but does not explain how he has personal knowledge of the applicant's residence before that date. 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). Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 2-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, or how he had personal knowledge of the applicant's addresses. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- An unnotarized form-letter "absence declaration" from [REDACTED]. The declarant states that he is "awared [sic] of the absence from this country of [the

applicant], who has been in this country since November 1981. Due to a powerful reason, [the applicant] had to leave the country on the following dates: August 26, 1985 to September 30, 1985 and October 20, 1987 to November 12, 1987.” The declarant also states that he can certify this information because he “took [the applicant] to the airport on the above[-]mentioned date [sic].” This declaration is inconsistent with the information that the declarant provided in the affidavit mentioned above. The AAO notes that in his affidavit dated December 18, 1989, the declarant claimed to have met the applicant in 1987 and therefore could not have taken the applicant to the airport in 1985. 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). Given these deficiencies, this declaration has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A copy of a page from the Verizon January 2004 telephone book as evidence of the existence of Our Lady of Sorrows Church. This copy does not confirm that the church existed during the requisite period or that the applicant was a member of the church during that time period. Given these deficiencies, this document has no probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

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 November 1981. 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 March 13, 2006. The director denied the application for temporary residence on July 10, 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. The director also noted that the restaurants for which the applicant worked during the requisite period did not appear to be licensed businesses in the State of New York during the requisite time period. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel restates much of what he wrote in his April 8, 2006 letter in response to the director's notice of intent to deny. On appeal, counsel adds that because the restaurants have

closed, the applicant is unable to provide information regarding the restaurants' business licenses in the State of New York.

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.