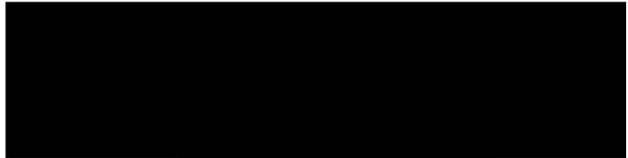


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U.S. Citizenship
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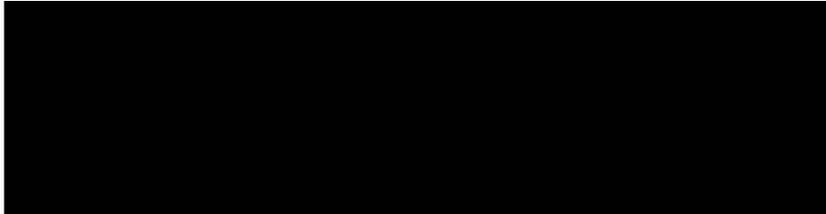
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FILE: [Redacted]
MSC-05-230-11432

Office: BUFFALO

Date: SEP 22 2008

IN RE: Applicant: [Redacted]

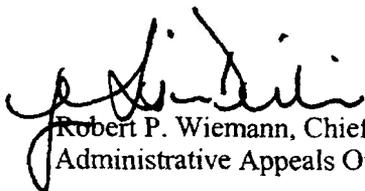


APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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, Buffalo. The decision is now before the Administrative Appeals Office 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on October 25, 2005.¹ 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 noted that the receipts submitted by the applicant did not show who made the purchases, and that the three affidavits submitted did not comply with statutory requirements. The director denied the application finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that the director abused her discretion and misapplied the law in denying his case, and that she failed to consider all of the evidence submitted.

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

¹ The applicant was represented in this proceeding by the attorney [REDACTED] of Irvington, New Jersey. On April 19, 2007, however, [REDACTED] pled guilty and was convicted of fraud and misuse of visas/permits, in violation of 18 U.S.C. § 1546(a). On May 18, 2007, the Board of Immigration Appeals (BIA) granted the petition submitted by the Department of Homeland Security and the Office of General Counsel for the Executive Office for Immigration Review, and suspended the respondent from the practice of law before the Board, the Immigration Courts, and the DHS. A final order of Nov. 8, 2007, expels him from practice before immigration tribunals, effective May 18, 2007. Accordingly, the applicant in this proceeding is considered to be self-represented.

timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on May 18, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

An affidavit dated November 16, 2005 from [REDACTED] in which he stated that he has known the applicant since the end of 1981. He also stated that he met the applicant at [REDACTED] the site of a Buddhist Temple, where the applicant attended religious ceremonies and helped the temple's resident monks. He further stated that he was allowed to stay at the above address from 1981 to 1989. Here, the declaration is inconsistent with what the applicant stated on his I-687 application at part #31 where he indicated "N/A" when asked to list all affiliations or associations with religious organizations and church groups. This inconsistency calls into question the credibility of the affiant's statement. Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since October of 1985 when he met him at the Washington Buddhist Temple, as they were fellow worshipers. Here, there is no evidence to demonstrate that the affiant possesses first hand knowledge of the applicant's whereabouts and circumstances during the requisite period. The affiant fails to indicate the applicant's place of residence during the course of their relationship. It is also noted that the applicant fails to indicate any type of association or affiliation with a church or religious organization on his I-687 application. Because the affidavit is lacking in detail and is inconsistent with statements made by the applicant on his I-687 application, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since November of 1987 when he met him at the "Temple." He also stated that the Temple provided food and lodging for the applicant from late 1981 through most of 1987, and that when he came to the Temple the other senior monks and lay persons spoke highly of the applicant as someone who had been at the Temple for several years. Here, there is no evidence to demonstrate that the affiant possesses first hand knowledge of the applicant's whereabouts and circumstances during the requisite period. It is also noted

that the applicant fails to indicate any type of association or affiliation with a church or religious organization on his I-687 application. Because the affidavit is inconsistent with statements made by the applicant on his I-687 application, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted copies of retail receipts dated September 30, 1981 and October 8, 1981 as evidence of his presence in the United States, however, he stated under oath during his interview with immigration officers on November 22, 2005 that he entered the United States "at the end of November, 1981." The applicant also submitted copies of retail receipts dated from 1982 to 1985; however, these receipts do not show who made the purchases. The applicant submitted copies of envelopes addressed to him and his college records dated 1986 and 1987. The applicant submitted copies of tax documents and retail receipts bearing his name and dated 1989 through 2004; however, the dates are subsequent to the requisite period and therefore cannot be used to establish the applicant's claimed residence.

In denying the application the director noted that the affidavits submitted by the applicant did not comply with the criteria set by immigration statutes, and that the receipts submitted did not identify the purchaser.

On appeal, the applicant asserts that he has provided sufficient documentation to demonstrate his continuous residence in the United States during the requisite period. He also asserts that the director abused her discretion in denying his application and that she failed to consider the three affidavits that were submitted by reliable sources. He further asserts that the bills and receipts submitted unfortunately did not mention his name. He stated that he submitted a letter from the chief monk of a religious temple who attested to the fact that he resided with them in Washington, DC from 1981 to 1989. The applicant does not submit any additional evidence.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. It is noted that the applicant stated under oath during his interview with immigration officers on November 11, 2005 that he was absent from the United States for two months from August of 1986 to September 2, 1986, when he returned with an F-1 student visa. It is also noted that the applicant submitted as evidence a copy of an Inter-Ed Asia programs application from the program's office located in West Malayusia, Sri Lanka. On the Inter-Ed Asia application, the applicant lists his local mailing address as No [REDACTED] a, and he signed and dated the application June 15, 1986. It is further noted that the record of proceedings contains a copy of an admissions certificate from the Indiana Institute of Technology located in Fort Wayne, Indiana, that was addressed to the applicant, in care of the Inter-Ed Asia program in Sri Lanka, and dated June 25, 1986. Therefore, it appears from the record that the applicant, if he was at all present in the United States, was absent for more than 45 days during the requisite period. The AAO further notes that the applicant submitted copies of his F1 visa and Form I-94 that shows that he was admitted into the United States in lawful status on September 2, 1986. Hence, he is unable to

demonstrate that he was in continuous unlawful status throughout the requisite period. It is further noted that the applicant stated under oath during his immigration interview that he was employed in 1986 by the Tepka Corporation for one and one half years, and that he subsequently was employed by Domino's Pizza in Washington, DC. However, the applicant fails to list any employment in the United States on his I-687 application at part # 33 until 1997, when he indicates that he was employed by Domino's Pizza in Bronx, New York.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. It appears from the record that the applicant did not enter the United States until September of 1986. Given the multiple inconsistencies that exist in the record, the conflicting statements made by the applicant, and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.