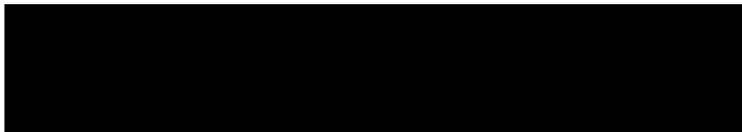


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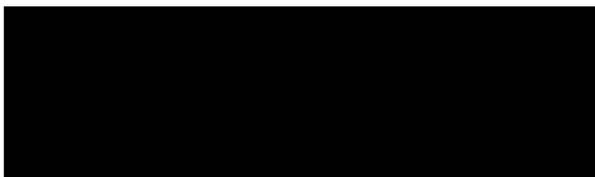
Office: NEWARK, NJ

Date: **APR 30 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.

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, Newark, New Jersey. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that she found that evidence submitted by the applicant in support of his applicant did not establish that he entered the United States on a date prior to January 1, 1982. She further noted that the applicant was lawfully admitted to the United States as an F1 student on August 25, 1985. She found that this indicated that the applicant did not reside in the United States continuously in an unlawful status from a date before January 1, 1982 through the date he attempted to file for legalization during the original legalization filing 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's attorney asserts that the director incorrectly determined that the applicant did not submit evidence that was sufficient to prove that he resided continuously in the United States for the duration of the requisite period. His attorney argues that documentation previously submitted is sufficient to satisfy this burden. His attorney goes on to say that the director failed to provide details as to why previously submitted documentation was not sufficient to satisfy the applicant's burden.

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

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the

documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the 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 or her burden of establishing that he maintained continuous unlawful residence in the United States for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services, (CIS) or the Service, on May 24, 2005. At parts #16 and #17 of this application the applicant indicated that he last entered the United States on August 25, 1985 using an F1 visa. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] in Jersey City, New Jersey from October 1981 until November 1983; [REDACTED] in Edison, New Jersey from November 1983 until November 1984; and [REDACTED] in Jersey City, New Jersey from November 1984 until December 1989. It is noted that the applicant indicated that he also lived at [REDACTED] from March 1990 until June 1995 and then again from September 2002 until he signed this Form I-687 in May 2005. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from July to August 1985 when he traveled to Egypt because of a family illness. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that during the requisite period he was employed by [REDACTED] in New York where he was employed as a busboy in 1982; by Flame and

Ale in Edison, New Jersey where he was employed as a busboy from 1983 until 1984; and as a self-employed driver in an unspecified location from 1984 until August 1992.

Also in the record is a Form I-687 submitted to establish class membership. This Form I-687 was submitted to the Service in February 1990. At part #16 of this application, the applicant indicated that he had last entered the United States in August 25, 1985 when he entered as a student with a valid visa. At part #33 of this application, the applicant indicated that his first address in the United States was [REDACTED] in an unspecified city in New Jersey where he lived from January 1982 with no specified ending date; at [REDACTED] in Jersey City, New Jersey from August 1985 with no specified ending date; at 41 Concord Street #2L in Jersey City from December 1988 with no specified ending date. Though the applicant indicated absences from the United States consistently on this Form I-687 and that which he subsequently filed, he did not list his places of employment consistently on his two Forms I-687. On this Form I-687, he indicated that he worked as a busboy at the Flame and Ale in New Jersey from February 1982 until May 1984; at "El Entrnational" in New York as an assistant cook from July 1984 until October 1987; and then as a cook at Chris's Lunch in Jersey City from October 1987 until December 1989. That the applicant did not consistently list his addresses of residence or places of employment during the requisite period on both Forms I-687 casts doubt on whether he resided continuously in the United States for the duration of that period.

The record further contains an affidavit for determination of class membership in the League of United Latin American Citizens V. INS (LULAC). On this affidavit, signed by the applicant on February 10, 1990, the applicant indicated that he first entered the United States without inspection on October 6, 1981 through Canada and then entered the United States again on August 25, 1985 when he entered in New York with an F1 visa.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish that he maintained continuous unlawful residence in this country since prior to January 1, 1982, and then for the duration of the requisite period, the applicant submitted the following:

- Photocopies of pages one through eleven of passport 463565. Of note, the title page indicates was issued to [REDACTED] by the Republic of Egypt. Page ten of this passport indicates the bearer was issued an F1 visa on August 21, 1985 and was then admitted to New York on August 25, 1985. A handwritten note in the passport shows the phrase, "ELS Language Center."
- A letter issued by ELS Language Center that indicates that the applicant was admitted to attend a course in English as a Second Language. This letter was stamped by a United States Immigration Officer on August 25, 1985.

- A notarized letter from [REDACTED] that is dated April 15, 2001. In this letter, the declarant states that she gave the applicant a letter and some money on an unspecified date in 1982. The declarant goes on to say that she contacted that applicant two to three times a year through an unspecified date. Though the declarant states that she contacted the applicant on unspecified dates during the requisite period, she failed to indicate that it was personally known to her that the applicant resided continuously in the United States during the requisite period. She failed to provide a place of residence address at which she personally knew that the applicant lived during the requisite period. Further, she failed to provide documents proving her identity or those that would prove that she herself resided in the United States during the requisite period. Because of its significant lack of detail, this letter can only be accorded very minimal weight in establishing that the applicant was present in the United States during the requisite period. As the declarant states that she did not meet the applicant until 1982, it carries no weight in establishing that the applicant began residing in the United States before January 1, 1982. Since the letter lacks detail and fails to state that the applicant resided in the United States during the requisite period, it does not carry any weight in establishing that he resided continuously in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] that states that she met the applicant in May 1984. Though the declarant states that the applicant is a good friend, she fails to indicate that it was personally known to her that the applicant resided continuously in the United States during the requisite period. She fails to indicate she personally knew where the applicant lived during the requisite period. Further, she fails to provide documents proving her identity or those that would prove that she herself resided in the United States during the requisite period. Because of its significant lack of detail, this letter can only be accorded very minimal weight in establishing that the applicant was present in the United States during the requisite period. As the declarant states that she did not meet the applicant until May 1984, it carries no weight in establishing that the applicant began residing in the United States before January 1, 1982 nor does it carry any weight in establishing that he resided continuously in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] that is dated June 6, 2003. Here, the declarant states that he first met the applicant in 1986. He goes on to say that he lived with the applicant for almost a year. Because this declarant did not meet the applicant until 1986, this letter carries no weight in establishing that the applicant began residing in the United States on a date before January 1, 1982. The letter also fails to state that he resided continuously in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] dated June 5, 2003. In this letter, the declarant states that he met the applicant in 1985 when he first entered the United States. Because the declarant states that he did not reside in the United States for the duration of the requisite period, this declarant cannot personally know that the applicant resided in the United States for the duration of the requisite period. In addition, the declarant failed to state that the applicant resided in the United States during the requisite period. Therefore, this letter carries no weight in establishing that the applicant resided continuously in the United States for the duration of that time.
- A notarized letter dated June 7, 2003 from [REDACTED] who states that he has known the applicant since 1986. Though he states that he resided with the applicant for a year and though he shows an address at which he personally knows the applicant resided after he met him, [REDACTED]

did not meet the applicant until 1986. In addition, the declarant fails to state that the applicant resided in the United States during the requisite period. Therefore, this letter carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period or that he entered the United States before January 1, 1982.

- An affidavit from [REDACTED] that is notarized and dated April 20, 2003. In this affidavit, the declarant states that he first met the applicant in 1981 when the applicant entered the coffee shop where [REDACTED] was working to inquire as to whether there were any positions open in that coffee shop. Here, the declarant does not indicate how he can verify the exact date that the applicant had a brief conversation with him in a coffee shop more than twenty years ago. He fails to indicate that he personally knew that the applicant was residing in the United States continuously when he had this conversation with the applicant in 1981. He further fails to provide proof of his identity or proof that he himself resided in the United States in 1981. In addition, he does not state that he had ongoing contact with the applicant in the United States that would allow him to personally know that the applicant resided continuously in the United States since 1981 and then for the duration of the requisite period.
- A notarized letter from [REDACTED] dated June 7, 2003 in which the declarant states that he met the applicant when he first entered the United States in 1984. He states that he met him at a grocery store. He goes on to say that he saw the applicant several times after that time at a friend's house. However, he fails to indicate the dates of these meetings or the frequency with which he saw the applicant. Because this letter is significantly lacking in detail and because the declarant states he himself did not reside continuously in the United States for the duration of the requisite period, this letter does not carry any weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] dated March 23, 2002 in which [REDACTED] indicates that the applicant was her tenant at [REDACTED] in Jersey City from July 1985 until June 30, 1995. It is noted here that on his Form I-687 submitted in 1990 to establish class membership, the applicant indicated that he resided at this address from December 1988 and on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, he indicated that he resided at this address from November 1984 until December 1989. Because evidence in the record regarding when the applicant resided at this residence is not consistent, doubt is cast on whether the applicant resided at this address during the dates indicated on this letter.
- A Certificate of Title for a car issued to the applicant on July 6, 1987. While this certificate is credible evidence that the applicant owned a car in the United States in 1987, it alone does not carry sufficient weight to establish that the applicant resided in the United States for the duration of the requisite period.
- Pay stubs from 1986 and 1987 issued to the applicant in the United States. While these pay stubs are credible evidence that the applicant worked in the United States during the requisite period, they do not span the duration of the requisite period. They carry no weight in establishing that the applicant resided continuously in the United States in an unlawful manner before 1986 or that he entered the United States before January 1, 1982.

- Cancelled checks showing the applicant paid rent and utility bills in the United States from 1987 and 1988. Though these cancelled checks show that the applicant resided in the United States in 1987 and 1988, they do not carry any weight in establishing that the applicant entered the United States before January 1, 1982 or that he resided continuously in the United States in an unlawful manner from that time until 1987.

The director issued a Notice of Intent to Deny (NOID) to the applicant on July 28, 2006. In her NOID, she stated that though the applicant submitted documentation in support of his application, all of this documentation was dated after his admission to the United States on August 25, 1985. She went on to say that because the applicant was lawfully admitted to the United States on August 25, 1985, he failed to maintain continuous unlawful status in the United States for the duration of the requisite period. The director noted that the applicant did not submit proof to substantiate his claim to have entered the United States before January 1, 1982, nor did he submit proof to substantiate his claims to have resided continuously and to have been continuously physically present in the United States during the requisite periods. She further stated that the applicant failed to submit proof that he attempted to file for legalization during the original filing period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

In denying the application, the director noted that in response to her NOID, the applicant submitted a letter from his attorney, seven (7) affidavits, a notice from the American Red Cross, a copy of a vehicular title from the New Jersey Department of Motor Vehicles and a driver history record from the New Jersey Department of Motor Vehicles. It is noted here that the letter from the American Red Cross states that the applicant was the victim of a fire that occurred on August 8, 2005. The director stated that none of the affidavits were submitted with proof that the affiants were physically present in the United States during the requisite period. Though one affidavit, that from [REDACTED] states that the affiant met the applicant in 1981, the director erroneously stated in her decision that none of the affiants claimed to have met the applicant before January 1, 1982. However, it is noted here that though [REDACTED] stated that he met the applicant in 1981, for reasons previously noted, the AAO does not find that his letter is sufficient evidence to prove by a preponderance of evidence that the applicant entered before January 1, 1982.

The director added that because the applicant was lawfully admitted to the United States with an F1 student visa on August 25, 1985, he failed to remain in the United States in a continuous unlawful status for the duration of the requisite period. Here, the AAO refers to the language of the LULAC/Newman Settlement agreement, page 3, paragraph 1 part A, which defines class members as,

All persons who are otherwise prima facie eligible for legalization under Section 245A of the Immigration and Nationality Act (“INA”) who attempted to file a completed application and application fee with a representative of the Immigration and Naturalization Service (“INS”) including a Qualified Designated Entity (“QDE”), during the period from May 5, 1987 to May 4, 1988 but had the application and fee refused by that representative because they had traveled outside of the United States and returned with a visitor’s visa, **student visa**, or any other type of travel document.

The AAO finds that because the applicant claimed to have departed the United States for less than forty-five (45) days in order to visit a sick family member during the requisite period, his return to the United States using a student visa alone does not necessarily cause him to have broken his continuous residency. Rather, it appears to the AAO that the Newman Settlement Agreement clearly states that if an applicant establishes that he or his is otherwise eligible for legalization, he or she would not be ineligible to adjust status solely because he or she left the United States for a brief, innocent and casual trip and then reentered using a student visa to resume his or her unlawful residence in the United States.

On appeal, the applicant's attorney asserts the applicant previously submitted sufficient evidence to prove that he maintained continuous unlawful status for the duration of the requisite period by a preponderance of the evidence. His attorney goes on to say that the director did not offer any analysis of the evidence previously submitted and therefore did not prove that the applicant did not meet this standard.

After reviewing evidence submitted by the applicant both with his Form I-687 to establish class membership in 1990 and with his Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements, the AAO finds that though the director erred in saying that the applicant's claimed return to the United States using an F1 student visa necessarily caused him to fail to maintain his continuous unlawful residence in the United States, the applicant failed to submit evidence sufficient to establish by a preponderance of the evidence that he entered the United States before January 1, 1982. He further submitted evidence regarding his residences during the requisite period that was not consistent, casting doubt on whether he resided in the United States for the duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of having entered the United States before January 1, 1982 and then maintaining continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record regarding his residences and places of employment during the requisite period seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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