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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: JUN 17 2008

MSC-05-238-12927

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.

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, Chicago. 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 noted an affidavit submitted by the applicant from affiant [redacted] The director stated that this affiant could not verify testimony in his affidavit when Citizenship and Immigration Services (CIS) or the Service contacted him on October 4, 2006. Because the applicant failed to provide evidence that was amenable to verification, 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 submits a brief through his attorney. In his brief, he argues that the director did not give sufficient weight to evidence he submitted in support of his application.

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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 26, 2005. 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 Addison, Illinois from September 1981 until August 1987; and [redacted] in Glanole [sic.] Heights, Illinois from September 1987 until July 1990. At part #31 where the applicant was asked to list all of the churches and organizations of which he was a member he indicated that he was not a member of any churches or organizations. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he went to India to attend to his wife's pregnancy from May to June 1982. 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 he was employed: as a buffer at the Kleen Kar Wash in Chicago, Illinois from September 1981 until August 1987; and

as the assistant manager of the Ajenta Foodi Grocery in Glendale Heights, Illinois from September 1987 until July 1990.

Also in the record is a Form I-687 that the applicant dated December 12, 1990 to establish class membership. Here, the applicant listed his residences, absences from the United States and places and dates of employment consistently with what he showed on his subsequently filed Form I-687. It is noted that on this Form I-687 the applicant indicated that he was not a member of any churches or organizations.

Also in the record is the applicant's Federal Bureau of Investigation (FBI) Identification Record. This record shows that the applicant was arrested on December 30, 2001 and charged with both *driving under the influence of drugs or alcohol* and with a violation of the Liquor Control Act. A court disposition regarding this arrest is in the record. This document is dated October 3, 2002 and shows that the applicant was arrested on December 30, 2001 and charged with *selling, giving or delivering alcohol to a minor* under section 6-16(a)(iii) of the Illinois Liquor Control Act. Ill. Stat. 235 § 5/6-16(a)(iii)(West 2001). The disposition shows that on May 2, 2002 these charges against the applicant were *nolle prossed.* (Case No. 02CM89-01) Therefore, because the record shows the applicant was not convicted of either three misdemeanors or of a felony, this arrest alone does not cause the applicant to be ineligible to adjust status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.2(c)(1).

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).

Here, the applicant submitted the following documents that are relevant to the requisite period in support of his application:

Affidavits:

- An affidavit from [redacted]r that was notarized February 8, 1991. In this affidavit, the affiant states that he has known the applicant for ten years. It goes on to say that the applicant left the United States to go to India from May to June 1982 by air to take his wife to see her mother. Here, the affiant did not indicate where he met the applicant or whether it

was is the United States. Although not required, the affiant did not submit proof that he himself resided in the United States during the requisite period. He did not indicate the frequency with which he saw the applicant in the United States. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

- An affidavit from that was notarized on November 2, 2001. In this affidavit, the affiant states that he has known the applicant for more than 20 years. He states that he himself resided in the United States since 1971 and became a United States Citizen in 1982. Although not required, he failed to submit evidence of his own residence in the United States during the requisite period. He further states that he personally knows that the applicant began to reside in the United States before January 1, 1982. Here, the affiant failed to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted] that was notarized on November 7, 2001. In this affidavit, [redacted] states he has known the applicant for more than 20 years. He states that the applicant has resided in the United States since 1981. Although not required, the affiant failed to submit evidence that he himself resided in the United States during the requisite period. He further failed to indicate where he first met the applicant or whether he first met him in the United States. He did not indicate the frequency with which he saw the applicant during the requisite period. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted] that was notarized on November 8, 2001. Here, the affiant states that he has known the applicant for 20 years. The affiant goes on to state that he himself entered the United States in1974 and became a United States Citizen in 1992. He goes on to say that he knows that the applicant has resided in the United States since 1981. Although not required, the affiant failed to submit evidence that he himself resided in the United States during the requisite period. He further failed to indicate the frequency with which he saw the applicant during the requisite period. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

- A notarized affidavit from [redacted] that was notarized on December 6, 2005. In this affidavit, the affiant states that the applicant first came to the United States in August 1981 with his wife, [redacted]. He goes on to say that the applicant's residence in the United States in from August 1981 until August 1987 was in Swifton Commons in Addison, Illinois and that he them moved to Glendale Heights where he resided from September 1987 until

1990. Here, he states that he used to visit the applicant at his apartment and that he spoke with him once a week. He goes on to say that the applicant told him that his wife gave birth to a baby boy in May 1982 in India but that the applicant returned in June 1982. The affiant states that he both took the applicant to the airport and picked him up from the airport when he returned from this absence.

Letter from a religious organization:

- A letter from [redacted] in Bensenville, Illinois that is signed by [redacted], who indicates that he is the president of that organization. This letter is not notarized and is dated February 18, 2002. Here, [redacted] indicates that applicant has been a devotee of Manav Seva Mandir since 1985. Here, [redacted] does not indicate how he can verify the applicant's start date as a member of the church. [redacted] states that the applicant visits the temple most Sundays and also attends religious festivals regularly. It is noted that this letter refers to the applicant as a "she." It is further noted that when the applicant was asked to list all of the churches and organizations of which he was a member on his Forms I-687, he showed that he was not a member of any churches or organizations on both his Form I-687 submitted to establish class membership in 1990 and on his Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements. Because this letter is not consistent with what the applicant showed on his Form I-687 regarding the applicant's membership in churches and organizations, doubt is cast on assertions made in this letter regarding the applicant's membership in this temple.

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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Other contemporaneous documentation:

- A letter from [redacted] Harper College from the English as a Second Language Linguistics Department that is dated January 17, 2001. This letter indicates that the applicant's son had resided in the United States for nine years. It is noted that this letter does not indicate when those nine years were. Therefore the AAO cannot determine whether this evidence proves that the applicant's son resided in the United States during the requisite period.

- Immunization records for the applicant's son. Though these records show that the applicant resided in the United States on September 6, 1990 and that the applicant's son received immunizations in 1982, 1983 and 1987, this form does not indicate where the applicant's son received these immunizations. This form does not offer evidence that the applicant's

son received these immunizations in the United States. Therefore it carries no weight in establishing that either the applicant or his son resided in the United States during the requisite period.

- A letter from Asia English School's primary section that certifies that the applicant's son was a student in that school. This letter is dated August 22, 1990. This address indicates and the AAO verified that this school is located on Drive-in Road in Ahmedabad, India.

- A document from Asia English School Primary Section that indicates that the applicant was in Standard Three at that school as of May 10, 1990.

The director denied the application for temporary residence on October 12, 2006. In denying the application, the director noted that on October 4, 2006 CIS contacted [redacted]. Mr. [redacted] stated the applicant's wife and son [redacted] returned to the United with the applicant in June 1982 and also said the applicant's son attended school in the United States from kindergarten until his studies concluded and never attended school in India. However, the director noted the applicant submitted evidence that included a letter from the Asia English School located in Ahmedabad, India that indicated that the applicant's son attended that school in India in 1990. The director went on to say that at the time of the applicant's interview with a CIS officer pursuant to his Form I-687 application, he stated that his wife and son began residing in the United States in 1990. The director stated that this discrepancy cast doubt on the credibility of documents submitted by the applicant in support of his application. She went on to say that this caused the applicant to fail to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a brief through his attorney. In his brief, he argues that the director did not give sufficient weight to the evidence submitted by the applicant. He quotes a memo from Immigration and Naturalization Service from February of 1989 that asserts that affidavits, if credible and verifiable, are sufficient to allow an applicant to meet his or her burden of proof. The applicant's attorney notes that this memo indicates the Service should attempt to verify the authenticity of information in affidavits submitted by an applicant if it finds an affidavit insufficient. Here, the applicant's attorney argues that the Service did not act in accordance with this 1989 memo. It is noted here that the director states in her Notice of Decision that she did attempt to verify information in an affidavit by calling affiant [redacted]

In doing so, she found that the affidavit the applicant submitted from [redacted] was not amenable to verification. The applicant's attorney further noted that the Service failed to issue a Notice of Intent to Deny (NOID) to the applicant before issuing a final decision.

Here, it is noted that paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

> Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived

deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

Here, the director did not deny the application based on class membership, but rather because the applicant failed to meet his burden of proof. The AAO notes that the regulation at 8 C.F.R. § 245a.2(o) specifies that an applicant for temporary residence requires that CIS inform an applicant of his or her decision. Neither the regulations nor the Settlement Agreements require CIS to issue a NOID when an application is adjudicated on the merits. Therefore, the director was not required to issue a NOID to the applicant in this case.

In summary, the applicant has not provided sufficient evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period. The affidavits he submitted in support of his application were not sufficiently detailed to meet the applicant's burden of proof. Further, when CIS contacted affiant [redacted] **he failed to** provide testimony that was consistent with the affidavit he submitted. Though the applicant submitted a letter from Manav Seva Mandir temple in support of his application, his Forms I-687 both indicated that he was not a member of any churches or organizations. These inconsistencies cast doubt on the credibility of documents in the record.

In this case, the absence of credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, 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.