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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 31 2008

MSC-04-349-10536

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 Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in her Notice of Intent to Deny (NOID), the director noted that record contained a signed sworn statement taken from the applicant at the Los Angeles International Airport in 1995. In the statement, the applicant stated that he first entered the United States in 1989. The director concluded that this indicated the applicant was not eligible to adjust to temporary resident status. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In her decision, the director noted the applicant's response to the NOID, in which he stated that his limited knowledge of English caused him to be unable to explain that he first entered the United States in May 1981 at the time of his 1995 interview. However, the applicant answered 38 questions in English during his 1995 interview. He also stated that he understood all of the questions asked by the immigration inspector and that he understood English at the time of this interview. The director noted that the applicant signed the statement four times and stated that he first entered the United States in 1989 during the interview. Therefore, the director found the applicant failed to satisfy his burden of proof and she denied his application.

On appeal, the applicant submits a brief through counsel, who states that the applicant did not mean to state that his first entry into the United States was in 1989 during his March 3, 1995 interview, but that the applicant provided this answer because he was tired due to the length of the flight. Counsel argues that the applicant had limited English, which also caused confusion at the time of this interview. Counsel states that the applicant's voluntary, signed, sworn statement given on March 3, 1995 should not be considered, because the applicant was not afforded the right to counsel or an interpreter at the time he made this statement.

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 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 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 that he first entered the United States before January 1, 1982 and then maintained 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 September 13, 2004. 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 indicated his addresses in the United States during the requisite period were all in California as follows: [redacted] in Los Angeles from May 1981 to January 1982; [redacted] in Los Angeles from January 1982 to October 1987; and [redacted] from December 1987 to February 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the

requisite period, when he went to India from October to December 1987 because his mother was ill. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was self-employed as a handyman in Los Angeles and Culver City, California during the requisite period.

The record contains a second Form I-687 submitted by the applicant to establish class membership in 1990. At part #33 of this application, where the applicant was asked to list all of his addresses since his entry into the United States, he stated that his first and only address in the United States was [redacted] in Los Angeles, California. It is noted that this address is not consistent with what the applicant stated to be an address of residence on his 2004 Form I-687.

Also in the record are the notes taken by an immigration inspector at the Los Angeles Airport on March 3, 1995. Each page of the notes is signed by the applicant. The notes indicate that the applicant stated that he first entered the United States for the first time on December 5, 1989 and that when he was asked a second time, "When is the first time you entered the United States either legally or illegally," he replied that his first date of entry was on December 5, 1989. The applicant also indicated that he understood all of the questions asked of him, that he submitted this statement voluntarily and that he understood English. The applicant also signed a statement in which he attested that he made this statement voluntarily and that all of the statements he made were true and correct.

The inconsistency regarding the applicant's stated address(es) of residence during the requisite period and his statement when he was interviewed by an immigration inspector in 1995 that he did not first enter the United States until after the end of the requisite period cast doubt on his current claim that he first entered the United States before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period.

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).

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

The record contains the following evidence that is relevant to the applicant's claim that he first entered the United States before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period:

Two affidavits from [redacted] which were notarized in India on July 28, 2004 and February 10, 2003. The affiant states that the applicant's father and he worked together and that he has known the applicant for a long time. He asserts that the applicant's father told him that the applicant would be going to the United States in May 1981. He states that he attended a going away party in India for the applicant. Though this affiant states that he knows that the applicant was leaving for the United States in 1981, he does not indicate that he personally knows that the applicant arrived in the United States after he went to the airport in India or that he resided in the United States for the duration of the requisite period. Therefore, because this affiant does not have personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period, this affidavit carries very minimal weight as evidence of that residence.

- Two affidavits from [redacted] that were notarized in Indian on July 27, 2004 and February 24, 2003. The affiant states that he is the applicant's father's neighbor in India and that he knows that the applicant was going to leave India in May 1981. He asserts that he attended a going away party for the applicant before the applicant's departure. Though this affiant states that he knows that the applicant was leaving for the United States in 1981, he does not indicate that he personally knows that the applicant arrived in the United States after he went to the airport in India or that he resided in the United States for the duration of the requisite period. Therefore, because this affiant does not have personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period, this affidavit carries very minimal weight as evidence of that residence.

- Two affidavits from [redacted] that were notarized on June 6, 2005 and January 13, 2003. Collectively the affidavits state that the affiant has known the applicant since June 1981, when they met in a Sikh temple in Los Angeles. He states that the applicant resided at [redacted] in Los Angeles from January 1982 to December 1987 and that he worked as a handyman. The affiant states that the applicant began to work with him in 1990. He indicates that he longest period of time that he has not seen the applicant for was two to three weeks during the period of November 6, 1986 to May 4, 1988. However, it is noted that the applicant indicated on his Form I-687 that he was absent from the United States from October to December in 1987, which is a period that is longer than two to three weeks. Further, the affiant does not indicate the frequency with which he saw the applicant during the requisite period. Because these affidavits are lacking in detail, they can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from the applicant, dated December 4, 2001, in which he states that he has resided in the United States for the duration of the requisite period.

It is noted that the applicant also submitted evidence of his residence in California after the requisite period ended. As this evidence is not relevant to the matter at hand, it is not discussed here.

On June 7, 2005, the director issued a Form I-72 Request for Evidence to the applicant, in which she requested that the applicant provide proof of both the affiants' residence in the United States during the requisite period and proof of their identities. The director informed the applicant that he must submit this documentation within 30 days.

In response to the Request for Evidence, the applicant submitted the following:

- A photocopy of a Yuba City High School Diploma issued to in 1975 in Yuba City, California;

- A photocopy of the identity page of two passports issued to [redacted] These passports were issued to [redacted] in 1982 and 2001.

The director issued a Notice of Intent to Deny (NOID) to the applicant on July 22, 2005. In the NOID, the director stated that the applicant's sworn statement made at the Los Angeles International Airport on March 3, 1995 in which he stated that his first entry into the United States occurred in 1989 indicated that he was not eligible to adjust to temporary resident status. The director stated that because of this, she intended to deny the application. The director granted the applicant 30 days within which to submit additional evidence for consideration in response to the NOID.

In response to the NOID, the applicant submitted an affidavit in which he stated that he first entered the United States in May 1981 and that he was absent from the United States from the last week of October until the first week of December in 1987. He asserts that in November 1989 he traveled to India again and entered the United States legally with a visitor's visa. He asserted that in 1995 when he attempted to re-enter the United States he stated that this first entry into the United States was in May 1981 and he subsequently entered the United States in December 1989. He asserts that he could not explain his entries and exits from the United States properly because he had a limited knowledge of English and was not provided with an interpreter at the time of the interview. He argues that the absence of an interpreter caused him to fail to convey the correct answers to the questions at the time of his interview with the immigration inspector in 1995. He states that at the time of his interview pursuant to his Form I-687 application he stated through an interpreter that due to his limited English, his statements made at the airport was not properly recorded.

The director denied the application for temporary residence on March 20, 2006. In denying the application, the director stated that the applicant failed to satisfy his burden of proof. The director noted that though the applicant asserted that he did not understand the immigration inspector who interviewed him on March 3, 1995, he answered 38 questions at the time of the interview and stated that he understood all of the questions and that he spoke and understood English at the time of the

interview. The director also noted that at the time of that interview, the applicant did not state that he had entered the United States prior to 1989 and that the applicant signed the sworn statement four times. The director stated that doubt was cast on the assertions made by the applicant in his NOID rebuttal.

On appeal, the applicant submits a brief through counsel, in which counsel reiterates that the applicant was not represented by counsel during his interview by the immigration inspector at the Los Angeles International Airport. He argues that the length of the travel caused the applicant to be tired and to suffer from jet lag, which, when combined by the applicant's poor command of English, caused the applicant to be unaware of the question regarding his first entry into the United States. Counsel argues that at the time of the 1995 interview, the applicant stated that his 1989 entry was the date that corresponded with his entry prior to his 1995 entry. Counsel requests that CIS consider other evidence previously submitted by the applicant in support of his application.

The AAO has reviewed the evidence in the record and has found that the applicant has failed to satisfy his burden of proof. Though the applicant argues on appeal, through counsel, that his poor command of English caused him to err when he provided answers regarding his first entry into the United States to an immigration inspector, the record reflects that the applicant provided detailed responses in English to the immigration inspector at the time of that interview. He was asked twice to provide the date he first entered the United States and he consistently stated that his first entry into the United States was in December 1989. There is no indication in the record that the applicant requested an interpreter at the time of this interview or that he had difficulty understanding questions asked at that time. Though counsel argues that the applicant was not represented at the time he was questioned by the immigration inspector, the applicant indicated that he was making the statement regarding his first entry into the United States voluntarily.

Further, though the applicant provided affidavits from three individuals as proof of his residence in the United States during the requisite period, only one of these individuals resided in the United States during that period. This individual, [redacted], does not state the frequency with which he saw the applicant during the requisite period. Further, he states that the longest period of time when he did not see the applicant was two to three weeks. However, the applicant stated on his Form I-687 that he was absent from the United States from October to December in 1987, which constitutes an absence of more than three weeks.

This inconsistency, when combined with the paucity of evidence submitted by the applicant in support of the application and his 1995 statement in which he asserted that he did not first enter the United States until after the requisite period ended causes the applicant to fail to satisfy his burden of proof.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during the 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.