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**U.S. Citizenship  
and Immigration  
Services**

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[Redacted]

FILE: [Redacted] MSC-05-285-13244

Office: NEW YORK

Date: AUG 30 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period. Specifically, the director's Notice of Intent to Deny (NOID) noted that the applicant could not recall the port of entry through which he entered the United States on November 11, 1980, his claimed date of first entry. The director further noted that while the applicant had submitted three affidavits to support his claim of having maintained continuous residence during the requisite period, these were found to be neither credible nor amendable to verification. Though the applicant revised the three affidavits previously submitted as a response to the director's NOID, the director examined these new affidavits and found that though they had been revised, they were still either not amenable to verification or not credible. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief prepared by his attorney and resubmits the three revised affidavits previously submitted as a response to the director's NOID, asserting that these documents establish that he has continuously resided in the United States from November 11, 1980 until May 4, 1988. The applicant maintains that the evidence he submitted was credible and amenable to verification and that he had met his burden of establishing by a preponderance of the evidence, that he maintained both continuous residence and continuous physical presence in the United States during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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) and 8 C.F.R. § 245a.2(b)(1).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously

in the United States in an unlawful status, and who 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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.

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 (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 resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 July 12, 2005. At part #16 of his Form I-687 application where the applicant was asked to indicate the date of his last entry

into the United States, the applicant indicates he last entered on March 24, 1998. 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 as follows: [REDACTED] from November 1980 to October 1985; and 95-17 [REDACTED] from October 1985 to June 1989. At part #32, where he was asked to list all of his absences from the United States, the applicant showed two absences. The first absence listed was a social visit to Canada which the applicant indicated took place during the month of December 1986 and ended that same month. The second absence is listed as a family visit to India which occurred from June 1989 to March of 1998. Similarly, at part #33, he showed his first employment during the requisite period in the United States to be for [REDACTED] California from November 1980 to October 1985. It is noted that the employment address he showed here is the same address he showed as his address of residence at that time. The second and final employment listed by the applicant during the requisite period was self employment. Here, he indicates that the address of his employer is 95-17 [REDACTED] from October 1985 to June 1989. It is noted that the employment address he showed here is the same address he showed as his address of residence at that time.

Though not noted by the director, the record contains a previously submitted Form I-589 Application for Asylum and Withholding of Removal, which the applicant signed under penalty of perjury in April of 2000. In section #18b of this application the applicant was instructed to indicate when he last entered the United States. Here, he indicated that he last entered on March 24, 1998. It is indicated in blue pen on the Form I-589 that this date was amended in court on May 16, 2001 to show July 8, 1999. Section #18g of this application asks an applicant if he or she has previously entered the United States. Here, the applicant checked the box indicating that he had not. In the space where an applicant would list previous entries into the United States the applicant did not show any.

It is further noted that the record also contains a transcript of removal proceedings in which the applicant was the respondent and provided testimony under oath. During these proceedings, which occurred on May 16, 2001 in New York, NY, the applicant provided testimony, noted on page 11 of the transcript, stating that his last date of entry before the date of those proceedings was on July 8, 1999. The immigration judge in this case clarified with the applicant that he had previously been in the United States in March of 1998. The applicant indicated that he had, but stated that he stayed for a period of five (5) months in New York City at that time, departing on August 29, 1998. On page 24 of the transcript of those proceedings, the judge explicitly asked the applicant, "When is the first time you came to the United States?" To this question, the applicant responded that he first came to the United States, "In ninety-eight, 24<sup>th</sup>, ninety-eight in March," indicating that the first time he ever entered the United States was on March 24, 1998. Page 31 of the transcript of the proceedings details the applicant's testimony regarding a detention that occurred during the ten (10) months and ten (10) day period he spent in India from August 29, 1998 to July 8, 1999. He indicated this detention occurred in Sabhanpur, India in June of 1999.

Also in the record is the applicant's response to the NOID issued by the director. On the third page of this response, the applicant states that he entered the United States by entering through Mexico in November of 1980. On the fourth page of this response, the applicant states that he remained in the United States until 1989 and reiterates that affidavits previously submitted establish his having maintained continuous residence in the United States during the requisite period.

Thus, information on the applicant's Form I-589 and subsequent testimony provided during his removal proceedings regarding his previous entries is not consistent with information that he provided on his Form I-687 or in his response to the director's NOID. Specifically, when asked when he first entered the United States during his removal proceedings, the applicant stated that the date of his first entry into the United States was on March 24, 1998. This casts great doubt on the applicant's current claim to have first entered the United States in November of 1980 and to have subsequently maintained continuous residence in the United States during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, though less relevant to this proceeding there are additional inconsistencies between the applicant's previously submitted Form I-589 and subsequent testimony provided during his removal proceedings and information provided on his Form I-687. The applicant indicated on his amended I-589 and during his testimony during his removal proceedings in 2001 that his last date of entry into the United States was on July 8, 1999, describing an arrest and beating that occurred in India in June of 1999. However, in Part #16 of his Form I-687 and in his response to the director's NOID, he indicated he last entered the United States on March 24, 1998 and remained in the United States since that time with no absences. He further provided an address at which he claims he resided continuously from March of 1998 until August of 2004. However, during the testimony the applicant provided under oath during his removal hearings, he indicated that he was in India from August 29, 1998 to July 8, 1999, a period of more than ten (10) months.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner 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 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. 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 continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided documentation, in the form of: three (3) affidavits; photocopies of his passport; a letter from the [REDACTED] tax returns; and copies of bank records. However, many of the documents submitted by the applicant do not relate to the required period of 1981-1988. Only the three affidavits and the photocopies of pages of the applicant's passport relate to this period in question.

Details of documents submitted in support of his application that are relevant to the requisite period as noted above are as follows:

- An affidavit from [REDACTED] notarized on April 2, 2006. The affiant states that he has lived continuously in the United States since April 1979, first arriving in New York in April 1979. The affiant states that the applicant was visiting New York from California at the time they first met. He states that the applicant visited the affiant at his home at 95-34 [REDACTED] and came to New York "regularly" through 1985. The affiant states that he saw the applicant "on a regular basis" in the [REDACTED] Temple from 1985 to 1989. The affiant provides his phone number and states that he can be contacted if more information is needed. Notes to the record indicate that the Service unsuccessfully attempted to contact [REDACTED] at the phone number provided.
  - This affiant was requested submit documents substantiating his claim that he resided continuously in the United States during the requisite period. To do so he submitted: a photocopy of check # 182 signed by the affiant on September 18, 1981; a photocopy of check #197 signed by the affiant on March 16, 1982; a photocopy of a New York Driver's License issued to the affiant on January 25, 1980, that is faded but appears to list his address as 95 30 [REDACTED] New York; A social Security card issued to the affiant; a payroll identification card [REDACTED] issued to the affiant by [REDACTED] on October 23, 1981; a cancelled passport [REDACTED] issued to the affiant with page 8 indicating that he entered the United States on April 20, 1979 and page 9 indicating that the United States Embassy issued him a B2 Visa on April 10, 1979.
- An affidavit from [REDACTED] that was notarized on November 30, 2005. The affiant stated in this affidavit that he has known the applicant personally since November 1981, when he met him in a [REDACTED]. The affiant states that he was "in constant touch" with the applicant because they both lived in California. He states that the applicant resided in California until 1985 and that he met with the applicant on a regular basis during those years. The affiant states that from 1981 until 1985 he lived at [REDACTED] California. The affiant states that he is willing to come forward if further information is requested. It is noted that

government records show that [REDACTED] first entered the United States on June 11, 1985.

- This affiant submitted his United States passport, which was issued to the affiant in San Francisco on September 23, 1996 with this affidavit.
- An affidavit from [REDACTED] that was notarized on November 14, 2005. The affiant stated in this affidavit that she has lived in the United States since 1978 and that she met the applicant in April 1981 when he visited a [REDACTED] in New York during a religious festival. The affiant states that she remained in touch with the applicant by telephone after she met him. The affiant goes on to say that she "often" saw the applicant in the [REDACTED] in Richmond Hill, New York from 1985 to 1989. The affiant states that she continuously resided in the United States at 34-01 [REDACTED] New York. The affiant provides her phone number and states that she is willing to come forward if further information is needed. Information in the record indicates that the Service attempted to contact [REDACTED] but this attempt was unsuccessful as her phone number was blocked.
  - The affiant provided a photocopy of her naturalization certificate dated April 17, 1984, a photocopy of the affiant's passport containing the affiant's photograph and entry stamps from 1978.
- Pages from the applicant's passport [REDACTED] containing two United States B2 visas. The first visa was issued to the applicant on March 11, 1998 and has control number [REDACTED]. The second B2 visa was issued to the applicant in [REDACTED] on June 24, 1999 and has control number [REDACTED]. Though it is not relevant to the requisite period, it is noted that the applicant stated on his Form I-687 that he maintained continuous residence in the United States, with no absences after March 24, 1998. Therefore the existence of a visa issued in India in June of 1999 casts doubt upon the applicant's claim of having maintained residence continuously during that time.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States during the requisite period. He submitted three (3) affidavits from individuals stating that he resided continuously in the United States during the requisite period. However, government records indicate that one affiant, [REDACTED] was not present in the United States during the time he claims to have personally known the applicant and to have seen him in the United States. No documentation was submitted to establish his presence in the United States before that time. Therefore, this affidavit is not found to be credible. Though the applicant submitted affidavits from two individuals who were present in the United States during the requisite period, they were both living in New York from 1981 to 1985 when the applicant claims to have lived in California. While they state that they saw the applicant in April of 1981, they would not have had personal knowledge that he resided continuously in the United States during those years. Further, when the Service attempted to contact these individual, those attempts were unsuccessful.

In denying the application the director noted the above, and the fact that the during the applicant's interview he could not recall the port of entry through which he entered in November of 1980. Therefore, the director stated that the applicant's claim to have commenced residing in the United States in 1980 and to have maintained continuous residence throughout the requisite period was unsupported. Additionally, though the director did not note this in her decision, information on the applicant's previously submitted I-589 and testimony provided under oath during his removal proceedings in May of 2001 indicates that his first entry into the United States occurred in March of 1998, further casting doubt on his claim to have maintained continuous residence in the United States during the requisite period.

On appeal the applicant attempts to explain these contradictions. He resubmits his previously submitted affidavits and submits a brief. This brief reiterates that the applicant entered the United States on November 11, 1980. He also states he attempted to file for legalization during the initial filing period but was rejected because of a previous departure during the requisite period that lasted twenty (20) days in November and December of 1986. The brief details the contents of the affidavits and states that these affidavits and the applicant's testimony establish by a preponderance of the evidence that the applicant maintained continuous residence in the United States during the requisite period. This brief further states that the applicant last re-entered the United States in March 1998 and that he "has been residing in the United States ever since." However, it is noted that the applicant also submitted a photocopy of a United States B2 visa was issued to the applicant on June 24, 1999 in [REDACTED] India and has control number [REDACTED]. This indicates that the applicant was in India rather than residing in the United States when he received this visa.

While it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M-*, *supra*.

However, *Matter of E-M-* also held that in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. Here, the affidavits submitted are not consistent with either the information in the I-589 that the applicant signed under penalty of perjury or with his sworn testimony he provided during his removal proceedings. Therefore, the affidavits submitted by the applicant are found to carry very little weight.

In summary, the applicant has not provided credible evidence of residence in the United States relating to the 1980-88 period, as the evidence provided is not consistent with previously submitted evidence in the record, and was found to lack credibility or amenability to verification. Further, the evidence the applicant submitted with his appeal does not overcome these inconsistencies or establish, by a preponderance of the evidence, that he maintained continuous residence in the United States.

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. Given the applicant's contradictory statements on his applications 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.