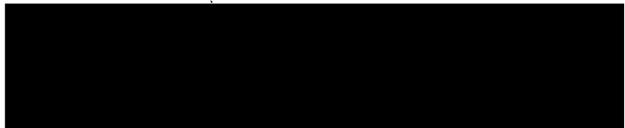




U.S. Citizenship
and Immigration
Services

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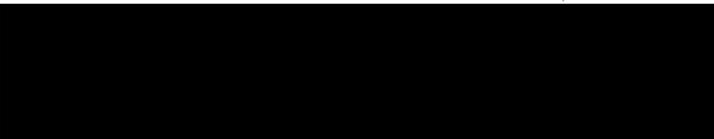
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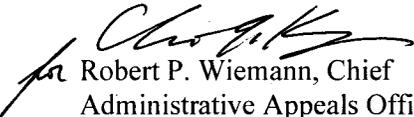
IN RE: Applicant: 

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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. 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 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. The director erroneously indicated the applicant must establish his unlawful status or physical presence and residence in the United States prior to January 1, 1982 through May 4, 1988, instead of that he must establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status from before January 1, 1982 until he attempted to apply for temporary resident status.

On appeal, the applicant stated that the evidence he submitted, together with his testimony in his interview with the immigration officer, establishes his eligibility for temporary resident status by a preponderance of the evidence. The applicant stated that denial of the application was improper. The applicant also summarized the director's decision, restated the requirements for temporary resident status, provided modified affidavits from prior affiants, and summarized the documents 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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 10, 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 listed the following Staten Island, New York addresses during the requisite period: [REDACTED] from July 2, 1981 to July 1984; and [REDACTED] from July 1984 to December 1990. At part #32 where applicants were asked to list all absences from the United States since entry, the only absence the applicant listed during the requisite period was a trip to [REDACTED] to see his sick father from February 26, 1987 until April 25, 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only his employment as a laborer with Bahri Halal Meat Market in Staten Island, New York from July 1981 to December 1990 during the requisite period.

According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's visit to Sri Lanka exceeded 45 days. Unless the applicant has established that emergent reasons prevented him from accomplishing the visit within 45 days, the applicant will be found not to have resided continuously in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple affidavits and other supporting documentation. These include affidavits stating that the applicant resided in the United States during the requisite period, affidavits confirming the identities of other affiants, and supporting documentation indicating affiants were present in the United States during the requisite period.

The applicant provided the following affidavits from individuals stating that the applicant resided in the United States during the requisite period:

1. Information related to [REDACTED]

The applicant provided two affidavits from Mr. [REDACTED]. In the first affidavit, dated June 24, 2005, Mr. [REDACTED] stated that he owned the business [REDACTED] in Staten Island, New York, and that the business operated from 1974 to 1994. Mr. [REDACTED] stated that he employed the affiant as a laborer from July 1981 to December 1990.

Mr. [REDACTED] provided a second affidavit dated November 22, 2005. In this affidavit, he confirmed the facts listed in his first affidavit. Mr. [REDACTED] also listed the following Staten Island addresses for the applicant during the requisite period: [REDACTED] from July 1981 to July 1984; and [REDACTED] from July 1984 to December 1990. It is noted that this information conflicts slightly with the information provided on the Form I-687, where the applicant indicated he lived at [REDACTED] instead of [REDACTED] Avenue. This inconsistency casts some doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period. Mr. [REDACTED] also stated that he does not have any business records since the business has been closed for 12 years and he is not legally obligated to keep the records for such a long time. He stated that he has provided documents including his FICA statement to prove his presence in the United States. It is noted that the record does not contain a FICA statement related to Mr. [REDACTED]. However, the record contains a FICA statement from [REDACTED] another affiant. This discrepancy casts some doubt on Mr. [REDACTED] ability to confirm the applicant resided in the United States during the requisite period.

The record indicates an attempt was made by an immigration officer to contact Mr. [REDACTED]. The officer only obtained confirmation that the applicant worked for Mr. [REDACTED] for six to

seven months in 1989, and the officer was told that no other information was available regarding the applicant. This casts serious doubt on Mr. [REDACTED]'s ability to confirm that the applicant resided in the United States during the requisite period.

The following supporting documentation relating to Mr. [REDACTED] was submitted by the applicant:

- Copy of Business Certificate for [REDACTED] in New Brighton, New York, dated January 17, 1977, listing [REDACTED] as the person carrying on the business. It is noted that the applicant indicated he was employed at the market when it was located in Staten Island. Since this document indicates the market was located in New Brighton, rather than Staten Island, in 1977, the document is only relevant to showing that the [REDACTED] existed prior to January 1, 1982. Therefore, its evidentiary value is limited;
- Copy of Business Certificate for [REDACTED] Market in Staten Island, New York, dated May 30, 1984, listing [REDACTED] as the person carrying on the business. It is noted that this document merely shows Mr. [REDACTED] business was operating in Staten Island during May 1984. Therefore, its evidentiary value is limited;
- Affidavit from [REDACTED] together with a copy of Mr. [REDACTED] identity document. Mr. [REDACTED] identified himself as [REDACTED] nephew. Mr. [REDACTED] stated that the [REDACTED] Market was located in Staten Island from 1981 to 1994 and had 25-30 employees. This affidavit merely confirms the existence of the market during the requisite period. Without additional evidence that the applicant worked at the market during this time, the affidavit is not relevant to establishing that the applicant resided in the United States throughout the requisite period;
- Identity documents of Mr. [REDACTED] including copy of biographical page of his passport and copy of his driver's license. Again, these documents help to establish Mr. [REDACTED] identity. However, without additional evidence that the applicant was employed by Mr. [REDACTED], this evidence is irrelevant to establishing that the applicant resided in the United States throughout the requisite period; and
- Form 4506-T Request for Transcript of Tax Return for [REDACTED] Meat Market, filed on May 14, 2006 containing an original signature. Without additional evidence the applicant was employed by Mr. [REDACTED] this evidence is irrelevant to establishing that the applicant resided in the United States throughout the requisite period. The value of this evidence is further limited because there is no indication on the form that it was ever accepted by the Internal Revenue Service for processing.

2. Information related to [REDACTED]

The applicant provided two affidavits from Mr. [REDACTED]. In the first affidavit dated March 2, 2006, Mr. [REDACTED] stated that the applicant has been well known to Mr. [REDACTED] since July 1981. Mr. [REDACTED] stated that the applicant lived with Mr. [REDACTED] at [REDACTED] from July 1981 to July 1984; and at [REDACTED] from August 1984 to December 1990. Mr. [REDACTED] also stated he remembered that the applicant was working at Bhari Halal Meat Market from July 1981 until December 1990.

In the second affidavit, Mr. [REDACTED] stated that the applicant was Mr. [REDACTED] tenant at [REDACTED] from July 1981 to July 1984 and at [REDACTED] from July 1984 to December 1990. Mr. [REDACTED] also stated that the applicant did not pay electricity or gas and only paid room rent, because the bills were in Mr. [REDACTED] name. Mr. [REDACTED] explained he first met the applicant when he came to Mr. [REDACTED] house looking for an apartment in July 1981, and since then they became friends.

The information in both affidavits is inconsistent with the information listed on the Form I-687, where the applicant indicated he lived at [REDACTED] from July 1981 to July 1984 instead of at [REDACTED]; and [REDACTED] instead of [REDACTED] Avenue, as stated in Mr. [REDACTED] first affidavit. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period. In addition, Mr. [REDACTED] provided no explanation of his ability to recall the dates during which the applicant resided on his property. As a result, this affidavit is found to lack sufficient detail. Also, despite indicating the bills were in his name, Mr. [REDACTED] failed to provide copies of any bills during the requisite period.

The following supporting documentation related to Mr. [REDACTED] was submitted by the applicant:

- Copies of identity documentation for Mr. [REDACTED] including birth certificate, medicare identification, and Social Security card;
- Copy of Business Certificate for [REDACTED] Cleaning Service in Staten Island, New York, dated October 4, 1977, listing J [REDACTED] as the person carrying on the business. It is noted that this document merely shows Mr. [REDACTED] cleaning service was operating in Staten Island during October 1977. It is not directly relevant to the determination of whether the applicant resided in the United States during the requisite period;
- Copy of Amended Business Certificate for [REDACTED]'s Cleaning Service in Staten Island, New York, dated January 30, 1987 and indicating that a change had been made so that the business was now conducted at [REDACTED], Staten Island.

This indicates Mr. [REDACTED] was associated with the [REDACTED] address during the requisite period. Without additional evidence indicating the applicant resided with Mr. [REDACTED], this information is not relevant to the determination of whether the applicant resided in the United States continuously throughout the requisite period.

- Copy of Certificate of Discontinuance of Business for [REDACTED]'s Cleaning Service in Staten Island, New York, dated February 4, 1999 and indicating the business was also discontinued on this date. Again, this document indicates Mr. [REDACTED] was associated with the [REDACTED] address during the requisite period. Without additional evidence indicating Mr. [REDACTED] can confirm the applicant's residence, this information is not directly relevant to the determination of whether the applicant resided in the United States continuously throughout the requisite period.
- Declaration from [REDACTED] dated March 29, 2006. This declaration states that Ms. [REDACTED] is Mr. [REDACTED]'s daughter. Ms. [REDACTED] stated that Mr. [REDACTED] was conducting a cleaning service business under the name of [REDACTED] Cleaning Service in Staten Island, New York. She also stated that her father resided at [REDACTED] Staten Island from 1981 through 1984 and at [REDACTED] island, from 1985 through 1990 and conducted the cleaning service business during that time. Again, this indicates Mr. [REDACTED] was associated with the above listed addresses during the requisite period. However, without additional evidence indicating he can confirm the applicant's residence, this information is not relevant to the determination of whether the applicant resided in the United States continuously throughout the requisite period.
- Copies of tax documentation for Mr. [REDACTED] from 1990 to 1992, together with a copy of a telephone bill for Mr. [REDACTED] from 2006. These documents are not relevant to determining whether the applicant resided in the United States during the requisite period.
- FICA earnings summary for Mr. [REDACTED] showing earnings continuously from 1956 to 1995. This document tends to prove that Mr. [REDACTED] was in the United States throughout the requisite period. However, without additional evidence indicating he can confirm the applicant's residence during the requisite period, this document is irrelevant to determining whether the applicant resided in the United States throughout the requisite period.

3. Information related to [REDACTED]

The applicant provided an affidavit from [REDACTED] dated July 27, 2005. In this affidavit, Ms. [REDACTED] stated that the applicant came to Canada on April 23, 1987 and stayed with Ms. [REDACTED] at her residence. She stated that the applicant left her residence to

go to New York on April 25, 1987. This affidavit tends to confirm the applicant's presence in the United States on April 25, 1987. However, it does not confirm he resided in the United States during the requisite period.

4. Information related to [REDACTED]

The applicant provided an affidavit from [REDACTED] dated June 22, 2005. In this affidavit, Ms. [REDACTED] stated that she lived at [REDACTED] Staten Island, from September 1981 to July 1984. She also stated she moved to [REDACTED], Staten Island from July 1984 to December 1990. She stated that she lived with her boyfriend, the applicant, who is now her husband. She also stated that she and the applicant took trips to [REDACTED] and both returned to the United States via Canada on April 25, 1987. This tends to show the applicant resided in the United States continuously throughout the requisite period, with the exception of his trip to [REDACTED] in 1987. It is noted that this affiant provided a third alternate spelling to the street the applicant refers to as Herbatan. This inconsistency casts some doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application the director found 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. The director erroneously indicated the applicant must establish his unlawful status or physical presence and residence in the United States prior to January 1, 1982 through May 4, 1988, instead of that he must establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant stated that the evidence he submitted, together with his testimony in his interview with the immigration officer, establishes his eligibility for temporary resident status by a preponderance of the evidence. The applicant also stated that denial of the application was improper. The applicant summarized the director's decision, restated the requirements for temporary resident status, provided modified affidavits from prior affiants, and summarized the documents he submitted in support of his application.

In summary, the applicant has not provided any contemporaneous evidence of his residence in the United States relating to the requisite period, and has submitted attestations from only four people regarding his residence during that period. Specifically, the affidavits from Mr. [REDACTED]

contain an inconsistency with the Form I-687 application and with the evidence provided, and the immigration officer was unable to confirm the applicant's employment for Mr. [REDACTED] during the requisite period. The affidavits from Mr. [REDACTED] also contain an inconsistency with the Form I-687 and lack sufficient detail. The affidavit from Ms. [REDACTED] merely confirms the applicant's presence in the United States on April 25, 1987. The affidavit from the applicant's wife also contains an inconsistency with his Form I-687. The remainder of the applicant's evidence relates to establishing the identities of his affiants and establishing that they resided in the United States during the requisite period.

Lastly, the applicant's statements on his Form I-687 and in his written affidavits indicate the applicant was absent from the United States for more than 45 consecutive days during the requisite period. As explained above, according to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant has provided no evidence indicating that emergent reasons prevented him from accomplishing his return to the United States during the time period allowed. The applicant indicated his purpose of departing the United States related to the illness of his father. However, the applicant provided no explanation of the reason his return to the United States was not accomplished within 45 days of departure. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

The absence of sufficiently detailed supporting 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 statements indicating he departed from the United States for a single absence exceeding 45 days, and given the applicant's failure to demonstrate emergent reasons prevented his timely return, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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