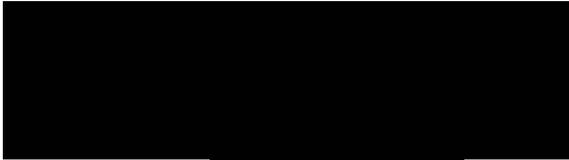




U.S. Citizenship  
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FILE:   
MSC-05-010-10298

Office: NEW YORK

Date: **APR 21 2008**

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:



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 Records 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, New York, 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 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. 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 asserts that he has and is submitting evidence of his entry into the United States.

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 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 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.

According to the Form I-687, the applicant stated that he first entered the United States on December 15, 1979.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 10, 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 showed his first address in the United States to be at [REDACTED], Bronx, New York from December 1979 to May 1988. Similarly, at part #33, he showed his first employment in the United States to be as a washer man at Wash N’ Dry in New York, New York, and concurrently in part-time self-employment with various employers in New York, New York as a handy man from January 1980 to present (i.e. August 25, 2004), the date the applicant signed his Form I-687.

The applicant submitted his passport from the Islamic Republic of Pakistan, and the following relevant documentation:

- A statement dated August 20, 2004, from [REDACTED] of Wash N’ Dry, 228 West 75<sup>th</sup> Street, New York, New York, “that [the applicant] is in our employment since January 1980 as a washer man/pickup and deliveryman as [a] contract worker.”
- As is discussed below, a commercial lease that commenced February 1980 for Wash N’ Dry’s business premises at 228 West 75<sup>th</sup> Street, New York, New York.

A letter from [REDACTED] of New York dated March 1, 2006, that the utility account for that location was activated on April 23, 1980. This letter indicates that the premises received electric service on that date which it is reasonable to assume would be the start of its business.

There is no explanation in the record how the applicant could be in the employ of Wash N' Dry one month before it acquired the lease for its business premises or four months before the coin operated laundry service business secured its electric service.

- A letter from J.P. Morgan Chase Bank, N.A. of Baton Rouge, Louisiana, dated February 22, 2006, stating that its client, Was N' Dry of 228 West 75<sup>th</sup> Street, New York, New York, opened a checking account on May 12, 1981 and giving that business' current account balance.

Further the applicant submitted an affidavit that reputedly provides evidence he was employed in a laundry in December 1979 in New York.

- An affidavit made July 24, 2004, from [REDACTED] of New York who stated that he has known the applicant since December 1979 when he met him in a laundry where the applicant was working. [REDACTED] stated that he personally certifies that the applicant is self employed and working as a laundry man/handyman during December 1979 to present as "we were in contact, visiting each other's house on weekends."

According to Form I-687, part #30, the applicant showed his first employment in the United States as starting in January 1980 to August 25, 2004, and not December 1979. There is no statement in the record that the applicant worked in a laundry until January 1980.

An affidavit made July 26, 2004, from [REDACTED] of New York who stated that he has known the applicant since December 1979 as he visited his home. [REDACTED] stated that he personally certifies that the applicant is self employed and working as a laundry man/handyman during January 1980 to present as "we were in contact, visiting each other's house on weekends."

An affidavit made July 26, 2004, from [REDACTED] of the Bronx, New York who stated that he has known the applicant since January 1980 as he visited his home.

The director determined that the applicant had not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) dated February 16, 2006. The director found that there was no evidence that Wash N' Dry, New York, New York, was doing business from January 1980 to January 1989. The director found, *inter alia*, that the letter provided by Sardar A. Shah, a partner/owner of the business did not explain how the applicant was paid, and no pay receipts were submitted to prove employment there.

In response to the NOID the applicant submitted the following:

- A letter from [REDACTED], partner of Wash N' Dry, New York, New York, dated February 28, 2006, that he was a partner in the business since 1980, that the applicant was employed as a washer on contract from 1980 to 1989, that the applicant was assigned jobs of washing, pickup, delivery and other laundry related works and that the applicant was paid in cash; and the aforementioned commercial lease for Wash N' Dry's business premises dated February 1980.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that evidence to establish proof of continuous residence in the United States during the requisite period of time may include:

(i) Past employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether [CIS] may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The above statements from [REDACTED] and [REDACTED] are deficient since they do not include the applicant's address at the time of his employment and because they are unsubstantiated by employment records or a reason why such records are not available. The applicant has submitted what appears to be customer receipts for Wash N' Dry services. The

receipts are dated during the requisite period. They may show that Wash N' Dry was in business then, but they do not establish the applicant's continuous residence.

Further the applicant submitted the following documents:

- An affidavit from [REDACTED] of New York made April 25, 2005 who stated that he has first known the applicant since August 1980 as he visited his home. Attached to affidavit is the affiant's biographic page from his United States passport issued September 1998 and a New York State driver's license issued February 13, 2003.
- An affidavit from [REDACTED] of the Bronx, New York made July 26, 2004 who stated that he has first known the applicant since January 1980 as he visited his home. Attached to this affidavit is the affiant's biographic page from his United States passport. The passport was issued July 15, 2003.
- A copy of the affidavit from [REDACTED] of New York made July 26, 2004 who stated that he has first known the applicant since December 1979 as he visited his home. Attached to this affidavit is the affiant's certificate of naturalization on January 14, 1976.

As already stated, the applicant at part #33 of the I-687 application stated that his first employment in the United States began in January 1980, not when [REDACTED] stated that the applicant was employed a month earlier. There is no information in the record of proceeding to explain this inconsistency.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

We note that several of the affidavits submitted were not accompanied by documentation of the affiant's identity, proof that the affiants were in the United States during the requisite period and did not include a probative explanation or proof of the relationship between the affiant and the applicant, and current contact information for the affiant.

According to the director the affidavits submitted were neither credible nor amenable to verification. Five of the affidavits were form instruments that stated identically that the affiants first met the applicant when he visited their homes over 20 years before, which was not substantiated. When requested by the director to provide evidence of his entry and the applicant's reputed long-term residence in the United States during the requisite period, the applicant submitted additional affidavits that on their face are not amenable to verification.

The director denied the application for temporary residence on September 9, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States on

December 15, 1979 is not credible. The director determined that the applicant had failed to meet his burden of proof of establishing his eligibility by a preponderance of the evidence.

As already stated on appeal, the applicant asserts that he has and is submitting evidence of his entry into the United States.

On appeal the applicant submits 13 receipts from Wash N' Dry for laundry services. On some of the receipts are hand written the applicant's name. Since these receipts issued for payments, mostly illegible or partially destroyed, were received from the applicant and not Wash N' Dry, we can not accept them as business records under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The receipts are also insufficient to establish the applicant's continuous residence in the United States throughout the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative evidence 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.