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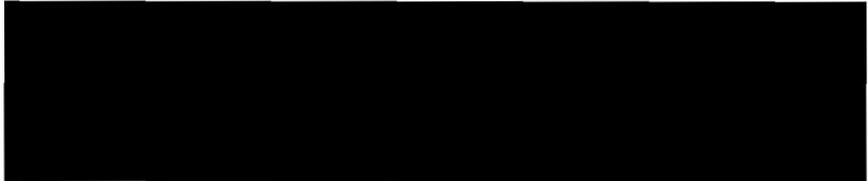


FILE: [REDACTED]  
MSC-05-078-10094

Office: NEW YORK

Date: APR 24 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 Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Resident Status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, 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. Specifically, the director stated that Citizenship and Immigration Services (CIS) or the Service attempted to contact affiants from whom the applicant had submitted affidavits as evidence in support of his Form I-687 application and those affiants either could not be contacted at phone numbers they provided in their affidavits or they did not verify information contained in their affidavits when they were successfully contacted. The director found that, in the case of the affiants who could not be contacted, the affidavits were not amenable to verification. Similarly, the director found that the affidavits that contained testimony that could not be verified by the affiants were of questionable credibility. The director also noted that the record contained a photocopy of a passport issued to the applicant in Alexandria, Egypt on December 12, 1987. Because the applicant did not indicate that he was absent from the United States in 1987 on his Form I-687 or at the time of his interview with a CIS officer pursuant to that Form I-687, the director felt this called into question whether the applicant had fully disclosed his absences during 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, through his attorney, asserts that the director applied the clear and convincing standard rather than the standard of a preponderance of the evidence when making the determination that the applicant did not meet his burden of proof. He argues that the applicant previously submitted evidence that meets this lower standard of proof and should therefore be granted Temporary Resident Status.

An applicant for Temporary Resident Status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing that he or she 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 December 17, 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 addresses in the United States during the requisite period to be: [REDACTED] in Astoria, New York from May 1981 until June 1988. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from May to June of 1984 when he traveled to Egypt to visit family. It is noted that this is the only time the applicant indicated he was absent from the United States during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that during the requisite period he first worked at R & V Deli as a dishwasher. He indicated that this employment was at 419 E. 70<sup>th</sup> Street in New York, NY from June 1981 until August 1987. He indicated that he then worked as a dishwasher for [REDACTED], located at [REDACTED] in New York City from September 1987 until April 1990. It is noted that all addresses of residence for this applicant shown on this Form I-687 from 1981 until 2004 were in the state of New York.

Also in the record is a Form I-687 that was submitted in 1990 to establish class membership. The applicant showed his addresses of residence and places of employment as well as his absences during the requisite period consistently on this Form I-687 and on that which he subsequently filed pursuant to the CSS/Newman Settlement Agreements. However, of note, on this Form I-687 the applicant indicated that at the time he submitted this form in 1990 he was living in Miami, Florida.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish that he maintained continuous unlawful residence in this country since prior to January 1, 1982, and then for the duration of the requisite period, the applicant submitted the following with his Forms I-687:

- A letter from the Consulate General of Egypt in New York. This document is dated September 4, 1990 and states that the applicant, [REDACTED] was issued passport number 1281 after he indicated that he lost passport [REDACTED]. This document states that the applicant registered at the consulate on a yearly basis from June 19, 1981 until the date this letter was issued. Though this letter states that the applicant registered on a yearly basis with the consulate, the consulate did not indicate that he was residing in the United States continuously during the years that he registered. This letter does not show an

address at which the Consulate could verify the applicant resided at any point in time during the requisite period. This letter does not indicate whether the Consulate knew of any absences from the United States during the requisite period. Because this letter is lacking in detail it carries minimal weight in establishing that the applicant was continuously resided in the United States during the requisite period.

- **Photocopies of pages of passport** [REDACTED] Page two (2) of this passport indicates that it is an Egyptian passport. Page three (3) of this passport indicates that it was issued to its bearer in Alexandria, Egypt on December 23, 1987. Page four (4) shows a photograph of the applicant and indicates that the passport was issued to [REDACTED] who was born in Alexandria on April 23, 1962. That this passport was issued to the applicant in Alexandria Egypt in 1987 indicates that the applicant was physically present in Alexandria, Egypt in 1987 when he received this passport. It is noted that the applicant did not indicate he was absent from the United States at any point in time during the year 1987 on his Form I-687 or at the time of his interview with a CIS officer pursuant to his application for Temporary Resident Status. That the applicant did not show this as an absence on his Form I-687 casts doubt on whether the applicant fully and completely disclosed all of his absences from the United States during the requisite period. It is noted here that the regulation at 8 C.F.R. § 245a.2(h)(1)(i) states that to have maintained continuous residence in the United States during the requisite period applicants cannot have had a single absence that exceeds forty-five (45) days during the requisite period. Because the applicant did not disclose this absence to CIS casts doubt on whether the applicant did not have a single absence from the United States that exceeded forty-five (45) days during the requisite period.
- A notarized letter from [REDACTED] that is dated June 4, 2005. In this letter, Mr. [REDACTED] states that the applicant lived with him at [REDACTED] in "LIC," New York from May 1981 until June 1988. It is noted that [REDACTED] provided a telephone number at which he could be reached to verify information in the letter. However, [REDACTED] does not provide documents as proof of his identity. He further fails to provide evidence that he himself resided in the United States during the requisite period. He does not indicate when and where he met the applicant, nor does he state whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this letter carries minimal weight in establishing that the applicant resided in the United States for the duration of the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the

information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. 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 applicant submitted three (3) employment verification letters in support of his application as follows:

- An employment verification letter from [REDACTED] Middle Eastern Food located at 411 E. 70<sup>th</sup> Street in New York that can be contacted at [REDACTED]. This letter is dated May 17, 2005. This letter states that the applicant has worked for the owner of that restaurant since September 1987. It is noted that the record indicates the district office was unable to verify that this restaurant existed at this address or with this phone number. However, when the AAO searched for this restaurant at this address, it found that a restaurant named Bistro 70 is located at that address. That restaurant was formerly called [REDACTED]'s and is located at 411 East 70<sup>th</sup> Street in New York. The restaurant's phone number is consistent with that shown on this employment letter. Though the AAO was able to verify the existence of this restaurant, it notes that this letter does not show the applicant's address at the time of his employment. Further, this letter does not state whether the information regarding the applicant's employment was taken from official company records nor does it state how this employer is able to verify the applicant's start date at the restaurant. Because this letter is lacking in detail and because it pertains to only part of the requisite period, from September 1987 until the end of that time, this letter carries only minimal weight in proving that the applicant resided in the United States from September 1987. As such, this letter carries no weight in proving that the applicant entered the United States prior to January 1, 1982 nor does it carry any weight in proving that the applicant resided in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED] that is dated June 1, 2005. The letter is on official letterhead from [REDACTED]. This letter states that the applicant was [REDACTED] employee from October 1984 until September 1985. [REDACTED] indicated that the applicant worked for him part time as a vendor who sold things from a news stand. The record indicates that on September 14, 2005 an officer from the New York District Office spoke to [REDACTED] who did not recall submitting this letter. As such, the New York District Office questioned the credibility of this employment verification letter. The AAO further notes that [REDACTED] did not provide an address at which the applicant resided during his period of employment. He further failed to indicate whether the applicant's period of employment was taken from company records or how he could verify the applicant's dates of employment.
- A letter from R & V Deli located at 419 E. 70<sup>th</sup> Street in New York. This letter is notarized and was dated June 2, 2005. [REDACTED] who indicates he is the manager of this restaurant, states that the applicant worked for him as a dishwasher from June 1981 until August 1987. This letter indicates that this restaurant is located at 419 E. 70<sup>th</sup> Street in New York and can be reached at (212) 535-1755. It is noted that the record indicates that an officer from the New York District Office could not verify that this restaurant existed at this

address and with this phone number. However, it is noted that when the AAO searched for this restaurant, it was able to find that this restaurant exists and that the phone number associated with this phone number is that seen on the letterhead of this letter. While the AAO did verify that this establishment exists, it notes that this letter does not show an address at which the applicant resided during the requisite period. It further does not indicate whether the applicant's dates of employment were taken from official records or how this employer was able to verify the applicant's dates of employment. It fails to indicate whether there were periods of unemployment during the applicant's time working for this delicatessen. Because this letter is significantly lacking in detail, it can only be afforded minimal weight as proof that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant on September 14, 2005. In her NOID, the director noted that the office was not able to verify the addresses or phone numbers associated with two employers as was noted above. She went on to say that when her office attempted to contact affiant [REDACTED] he did not recall who the applicant was nor did he recall submitting the letter found in the record in which he stated that the applicant was his employee. As was previously noted, the director found that the presence of passport number [REDACTED] which was issued to the applicant in Alexandria, Egypt in 1987 indicated that the applicant was not in the United States for an indeterminable length of time in 1987. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. Though the director noted that she received a timely response to her NOID, she noted that the applicant submitted duplicates of previously submitted documents that she had already considered at the time of issuing her NOID. She noted that though the applicant indicated that [REDACTED] did not speak English well and therefore he did not understand the officer who contacted him, the director did not find this a reasonable explanation, as the officer found that [REDACTED] clearly stated that he did not remember the applicant. It is noted here that [REDACTED]'s letterhead indicates that he is an insurance broker who is also a Notary Public. It is also noted that [REDACTED] notarized several documents in this applicant's record and that all of these documents are in English. Because the director was not able to verify documents in the record and because she found evidence in the record that the applicant had not fully disclosed his absences from the United States during the requisite period, she found the applicant failed to meet his burden of establishing that he maintained continuous residence in the United States for the duration of the requisite period. Therefore, she denied the application.

On appeal, the applicant asserts through his attorney that the director applied a higher standard of proof than she should have with regards to this applicant. The applicant's attorney asserts that the director applied the clear and convincing standard rather than the preponderance of the evidence standard of proof. He goes on to say that this applicant has submitted more evidence than the average applicant and that if the Service applied the proper standard of proof to this applicant, he would meet his burden. He does not submit additional, new evidence in support of his application.

However, for the reasons noted above, the AAO finds that it is not more likely than not that the applicant resided in the United States for the duration of the requisite period.

In summary, the applicant has not provided evidence of residence in the United States during the requisite period that was probative or amenable to verification. The applicant did not submit evidence that any affiants from whom he submitted documents were present in the United States during the requisite period. Their affidavits were significantly lacking in detail such that they could not be afforded adequate weight to prove that, more likely than not, the applicant resided continuously in the United States for the duration of the requisite period. There is evidence that the applicant did not fully disclose all of his absences from the United States during the requisite period, further calling into question the credibility of statements the applicant made regarding his continuous residence during that time.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the 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.