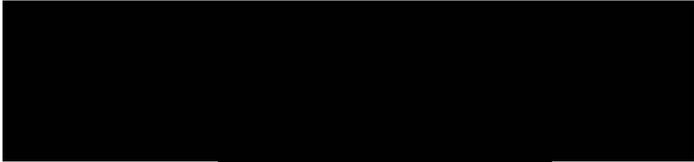


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FILE: [REDACTED] Office: NEW YORK Date: **FEB 20 2008**  
MSC-05-342-12728

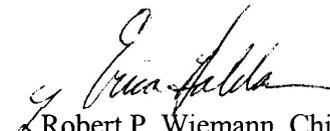
IN RE: Applicant: [REDACTED]

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: 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.

  
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 failed to establish that he met the residence and physical presence requirements for temporary resident status. The director mistakenly stated that the applicant failed to meet his burden of establishing his physical presence and residence in the United States from prior to January 1, 1982 through May 4, 1988, instead of the burden of establishing that he resided in the United States continuously from before January 1, 1982 until the date he attempted to file for temporary resident status.

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 his original application for temporary resident status was rejected in 1987. The applicant also provided new attestations in support of his claim to have resided in the United States throughout 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing 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 Supplement to Citizenship and Immigration Services (CIS) on September 7, 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 address during the requisite period: [REDACTED], Richmond Hill, New York from June 1981 to December 1988. At part #32 where applicants were asked to list all absences from the United States since entry, during the requisite

period the applicant listed only a family visit to the Philippines from November 1986 to December 1986. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed no employment during the requisite period.

The record also includes a Form I-589 Request for Asylum in the United States signed by the applicant on May 25, 1991. At part #22 of the Form I-589, where applicants were asked to list all sons and daughters, the applicant listed children born on the following dates in the Philippines: June 3, 1980; October 24, 1983; February 14, 1985; and December 31, 1988. In addition, the record includes a Form G-325A Biographic Information signed by the applicant on May 25, 1991. Where applicants were asked to list their last addresses outside of the United States of more than one year, the applicant listed an address in the Philippines from May 1980 to January 15, 1991. This information is inconsistent with the applicant's Form I-687, where he indicated he resided in the United States continuously throughout the requisite period. The applicant's statement on his Form G-325A indicating he resided in the Philippines until January 1991 casts serious doubt on his claim to meet the residency requirements for temporary resident status.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations that relate to the requisite period. The applicant submitted an affidavit from [REDACTED] MD dated March 29, 2006. In this affidavit, the affiant confirmed the applicant's address during the requisite period, as listed on his Form I-687. The affiant stated that she had treated the applicant for viral influenza in July 1981, had given him a series of three hepatitis B vaccines in 1992, and the applicant was treated for tonsillitis in May 2004. This affidavit contains no explanation of the affiant's ability to recall her treatment of the applicant nearly 25 years later, including whether the affiant recalls this treatment from personal memory or by consulting the applicant's medical records. The affiant also failed to explain her ability to confirm the applicant's residence in the United States throughout the requisite period, considering that she failed to indicate that she had any contact with the applicant during that period. Lastly, the affiant failed to indicate whether she has medical records for the applicant and, if so, whether CIS may have access to these records. This affidavit lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED]. This affidavit states that the applicant and his wife entered the United States in May 1981 and the affiant drove the couple to New York in June 1981. This affidavit fails to indicate the date and circumstances in which the affiant met the applicant, and the nature of their relationship. The affidavit also fails to explain how the affiant came to drive the applicant and his wife to New York in 1981. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States prior to January 1, 1982.

In a Notice of Intent to Deny (NOID) issued to the applicant on April 6, 2006, the director identified inconsistencies between the applicant's statements on his Form I-687 and his Form G-325A. The director also stated that the applicant had failed to submit corroborative evidence of his initial entry

from Canada to the United States, including documents showing a valid entry to Canada at that time. The director also identified an apparent inconsistency between the applicant's statements in his interview with an immigration officer on April 6, 2006 and his statements in his Form I-589 application. Specifically, the director explained that the applicant had indicated in his interview that his wife had been in the United States since 1981, yet his Form I-589 indicates each of the applicant's children were born in the Philippines. Two of these children were born in the Philippines during the requisite period. The director explained that she intended to deny the application based on the above inconsistencies and upon the applicant's submission of fraudulent documents.

In response to the NOID, the applicant provided a written statement reiterating that he entered the United States on or about June 1981. It is noted that this information is inconsistent with the affidavit provided by [REDACTED] which indicates the applicant entered the United States in May 1981 and was transported to New York in June 1981. This inconsistency casts additional doubt on the applicant's claim to have resided in the United States throughout the requisite period. In his response to the NOID, the applicant also reiterated that he had attempted to file for temporary resident status during the initial application period for temporary resident status, and this application was erroneously rejected because of the applicant's international travel in 1986. In his response, the applicant failed to address the inconsistencies between his application for asylum and his application for temporary resident status, including his statements regarding his residence in the Philippines and regarding the births of his children there while his wife was allegedly in the United States. The applicant's failure to attempt to explain these inconsistencies, when given the opportunity to do so, casts serious doubt on his claim to have resided in the United States throughout the requisite period.

In denying the application, the director indicated that the applicant had failed to meet his burden of establishing that he resided in the United States continuously from before January 1, 1982 until the date he attempted to file for temporary resident status. Specifically, the director indicated that the applicant had failed to provide additional evidence to overcome the inconsistencies identified by the director in the NOID.

On appeal, the applicant stated that his original application for temporary resident status was rejected in 1987. The applicant also provided new attestations in support of his claim to have resided in the United States throughout the requisite period. One of these attestations, from [REDACTED], does not relate to the requisite period. The applicant also provided an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated that the applicant worked for the affiant's company in New York from 1984 to 1988. This affidavit is inconsistent with the applicant's Form I-687 where he failed to indicate that he was employed in the United States during the requisite period. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, the affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, duties

with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only three people concerning that period. The affidavits from [REDACTED] and from [REDACTED] lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687 and does not conform to regulatory standards. These affidavits are insufficient to overcome the documents in the record, including the applicant's Form I-589 and Form G-325A, that directly contradict his claim to have resided 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 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 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.