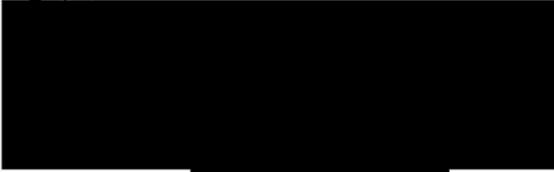


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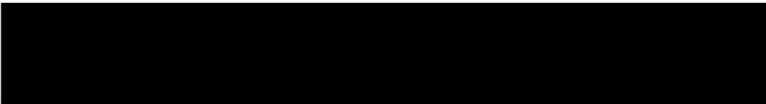
IN RE: Applicant:



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:



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. Wieman, 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, on March 16, 2005. 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 as 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 continuously resided in the United States from December 1981 until May 4, 1988. He submits new affidavits 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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.* 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 applicant 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 Citizenship and Immigration Services (CIS) on March 16, 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 showed his addresses in the United States during the requisite period to be [REDACTED] in the Bronx, New York from October of 1981 until March of 1985; and the [REDACTED] in Chicago, Illinois from March of 1985 until July of 1988. At part #31, when the applicant was asked to provide the names of all churches and organizations of which the applicant was a member, he indicated that he was not affiliated with any churches or organizations. At part #33 of the application, where the applicant was asked to provide the names and address of all of his employers since he first entered the United States, he showed that during the requisite period, he was unemployed from October 1981 until December of 1982. He then showed he worked for Foods and Flavor in New York as a busboy from January of 1982 until March of 1984 and then [REDACTED] Restaurant in Chicago, Illinois from May of 1984 to July of 1987. It is noted that as the applicant indicated he lived in New York until March of 1985, he is indicating that he was working as a busboy in Chicago for ten (10) months of that time. The last employment shown on the applicant's Form I-687 during the requisite period was work for the Standard Indian Restaurant as a busboy from September of 1987 to June of 1994.

The record also contains a Form I-687 submitted to establish class membership. This Form I-687 and an accompanying affidavit were signed by the applicant on March 21, of either 1989 or 1990. Here, the Form I-687 is photocopied and is not easily legible. However, it appears that the applicant indicated that he resided at [REDACTED] in the Bronx from October of 1981 until February of 1985. All other information regarding the applicant's addresses of residence and places of work is consistent with what he showed on his subsequently filed Form I-687.

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).

The record contains evidence submitted with the applicant's previously filed Form I-485 and evidence that he submitted with both Forms I-687.

The following evidence has been submitted by the applicant in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- A letter from A & J Caterers, Inc under the name Arthur Treacher's Fish & Chips that is dated October 7, 1982 that asserts that the applicant worked in the cooking area at this establishment from 1980 until 1982. It is noted that the applicant indicated that he was unemployed from the date he entered the United States until December of 1982. It is also noted that both on his Forms I-687 and at the time of the applicant's interview, he indicated that he did not first enter the United States until October of 1981. Therefore, doubt is cast on the credibility of this affidavit.

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. 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).

- Two affidavits from [REDACTED]. One affidavit is dated October 4, 2000 and the other is dated January 8, 2004. In both affidavits, [REDACTED] states that she has known the applicant since 1981. She indicates that she met the applicant on a trip to Chicago. She states that he has painted her apartment several times. However, she does not indicate when he painted her apartment. Ms. [REDACTED] fails to indicate the frequency with which she saw the applicant during the requisite period or to offer evidence that she herself resided in the United States for the duration of that time. Ms. [REDACTED] does not provide an address at which it is personally known to her that the applicant resided during the requisite period. Though this affiant signed this affidavit which stated that she has known the applicant from a date prior to January 1, 1982, the record indicates that when the Service attempted to contact her pursuant to verifying the information in the affidavit subsequent to the applicant's interview for Permanent Residence, she indicated that she has only known the applicant since 1983. Therefore, doubt is cast on the credibility of the assertions made in this affidavit.
- Two letters from [REDACTED], one of which is dated October 12, 2000 and the other of which is dated January 9, 2004. In both letters, [REDACTED] states that he has known the applicant since 1981. He states that he hired the applicant to do construction work several times since meeting him. Here, [REDACTED] does not indicate where he met the applicant nor does he provide an address in the United States at which he personally knows that the applicant resided during the requisite period. He fails to offer proof that himself resided in the United States during the requisite period. Further, the applicant has indicated on both Forms I-687 that his employment for the duration of the requisite period was as a busboy. He has not indicated that he has ever worked doing construction work.
- Two affidavits from [REDACTED]. The first affidavit from this affiant is dated October 10, 2000 and the second is dated December 3, 2004. These affidavits do not contain consistent information regarding when the affiant met the applicant. The affidavit from 2000 states that the affiant has known the applicant since 1980. Here, [REDACTED] does not indicate whether he first met the applicant in the United States. It is noted that the applicant claimed at the time of his interview with a Citizenship and Immigration Services officer that he did not enter the United States until October of 1981. The affidavit from 2004 shows that the affiant met the applicant in 1981. Because the affiant has asserted that he first met the applicant on two different dates in his statements, doubt is cast on the credibility of [REDACTED]'s representation of how long he has known the applicant.

- An affidavit from [REDACTED] that is dated December 31, 2003. In her statement, [REDACTED] indicates that she met the applicant in 1987, when he was traveling from Chicago to New York. Here, [REDACTED] does not indicate that it is personally known to her that the applicant resided in the United States during the requisite period. Though she has submitted her driver's license, which indicates she currently resides in Cleveland, Ohio, she has not offered proof that she herself was in the United States during the requisite period. Because of its significant lack of detail and because the letter does not establish that [REDACTED] can verify the applicant's presence in the United States prior to 1987, no weight can be afforded to this letter in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A statement from [REDACTED] dated January 2, 2004. In this statement, [REDACTED] states that he worked with the applicant from August to December of 1988 doing jobs at construction sites. This statement does not contain testimony relevant to the requisite period. It is noted that the applicant has indicated on both of his Forms I-687 that from August to December of 1988 he was working as a busboy at the Standard India Restaurant. It is further noted that the applicant has consistently shown on his Forms I-687 that the only employment he has had was as a busboy and then as a taxi driver.
- Two affidavits from [REDACTED], one that is dated January 4, 2004 and the other that is dated March 3, 2004. In these affidavits, [REDACTED] states that he has known the applicant since 1982 when they met at a fast food restaurant on [REDACTED] in Queens, New York. He asserts that he is now friends with the applicant. Here, [REDACTED] fails to provide an address at which it is personally known to him that the applicant resided in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period. He does not provide proof that he himself was present in the United States during the requisite period. Because it is significantly lacking in detail, this letter can be accorded little weight in establishing that the applicant resided in the United States during the requisite period. Because this letter indicates that [REDACTED] met the applicant after January 1, 1982, it carries no weight in establishing that the applicant entered the United States prior to that date.
- Two statements from [REDACTED], dated January 5, 2004 and March 4, 2004. In these statements, [REDACTED] indicates that he worked with the applicant doing construction work from June of 1982 until September of 1982. Though [REDACTED] attests to the applicant's work ethic in this letter, it does not pertain to the duration of the requisite period. It is noted that the applicant did not indicate that he ever performed construction work on his Form I-687. It is also noted that the applicant indicated on his Form I-687 that he was unemployed until December of 1982. Further, though [REDACTED] states he worked with the applicant from June to September of 1982, he does not state whether he is personally aware of the events and circumstances of the applicant's residence for the duration of the requisite period. The record indicates that when a Service officer attempted to call this affiant subsequent to his interview pursuant to his application for Permanent Residence and, the individual who answered the telephone hung up on that officer. Because this letter only pertains to the year 1982, it carries no weight in establishing either that the applicant first entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the requisite period.
- A letter from [REDACTED] dated January 10, 2004. [REDACTED] indicates that she met the applicant in 1986 and has known him since then. Here, [REDACTED] fails to indicate where or how she met the applicant or whether that meeting took place in the United States. She does not

provide an address at which it is personally known to her that the applicant resided during the requisite period. It is noted that the [REDACTED] lives in New York, and in 1986 the applicant indicated that he lived in Chicago. [REDACTED] states that the applicant has helped her with home improvement projects. It is noted that the applicant has indicated that for the duration of the requisite period, he was employed as a busboy rather than as a construction worker. The record shows that subsequent to his employment as a busboy, the applicant has indicated that he was employed as a taxi driver. The applicant has not indicated that he was ever employed doing construction or home improvement work. The record indicates that the Service attempted to but was unable to contact this affiant to verify information in this letter after the applicant's interview pursuant to his application for Permanent Residence.

- A statement from [REDACTED] who states that the applicant resided with him for one week in 1987. Though [REDACTED] attests to the applicant's residence in New York for one week, he does not provide testimony regarding where the applicant resided for the rest of the duration of the requisite period. Therefore, this letter carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A third statement from [REDACTED] that is dated March 1, 2004. In this statement, [REDACTED] asserts that when the CIS officer contacted her to verify information in her affidavit she was ill and taking medication. She states that, contrary to what she told the CIS officer when she was contacted by that officer, she did meet the applicant in 1981.
- An additional statement from [REDACTED] dated March 6, 2004 who states that he erred in indicating that he met the applicant in 1980 rather than 1981 in his previous affidavit. He asserts that he met the applicant in late 1981 and that they have been friends since then. He states that he is now residing in Pakistan but provides a phone number in Pakistan at which he can be reached if further information is needed.
- A statement from the applicant in which he asserts that he is enclosing new testimony from previous affiants. He states that he is unable to provide an amended affidavit from A&J because the company no longer exists. He asserts that they must have made an error in their original affidavit concerning his dates of employment with them.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However 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. *Matter of E- M--*, *supra*.

In her Notice of Intent to Deny (NOID) dated February 6, 2006, the director noted that she found that the evidence submitted by the applicant did not allow the applicant to establish by a preponderance of the evidence that he had entered the United States on a date prior to January 1, 1982 and then continuously resided since that date and until he tried to file for legalization during the original filing period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

The record shows that evidence submitted in response to the director's NOID includes the following:

- A new affidavit from [REDACTED] that is dated February 25, 2006 that is a duplicate of the previous affidavit from this affiant.

- A new affidavit dated February 25, 2006 from [REDACTED] who states that he has known the applicant since 1981 and asserts that he and the applicant prayed together at the same mosque. Here, the affiant fails to indicate where he met the applicant or whether it was in the United States. He does not state the dates through which he and the applicant attended the same mosque. It is noted that [REDACTED] lives in New York and the applicant lived in Chicago, Illinois from 1985 until 1994. [REDACTED] does not provide an address at which it was personally known to him that the applicant resided at during the requisite period. It is also noted that this affiant previously indicated in his 2000 affidavit that he met the applicant in 1980, before the applicant indicated that he entered the United States. Therefore, this affidavit carries very minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A new affidavit from [REDACTED] that is dated March 3, 2006, the contents of which are a duplicate of the previous affidavit from this affiant.

Though the director noted that on March 3, 2006, her office received this additional evidence from the applicant in support of his application, she stated that this evidence was not sufficient to meet the applicant's burden of proving by a preponderance of the evidence that he entered the United States on a date prior to January 1, 1982 and then continuously resided in the United States until he attempted to file for legalization during the original filing period.

On appeal, the applicant asserts that he continuously resided in the United States for the duration of the requisite period. He submits new affidavits in support of his application. Details of those affidavits are as follows:

- A new affidavit from [REDACTED] who states that he first met the applicant on the subway going into Queens, New York. He asserts that the applicant left for Pakistan for one month in 1987 and that it is personally known to him that the applicant attempted to file for legalization during the original filing period but was turned away. Here, the affiant does not provide addresses at which it is known to him that the applicant resided during the requisite period. He has not offered proof that he himself resided in the United States during the requisite period. He has further failed to indicate whether there were periods of time during which he did not see the applicant during that time.
- A new affidavit from [REDACTED] who states that he first met the applicant at a fast food restaurant in Queens in 1982. [REDACTED] also asserts that the applicant left for Pakistan for one month in 1987 and that it is personally known to him that the applicant attempted to file for legalization during the original filing period but was turned away. Here, the affiant does not provide addresses at which it is known to him that the applicant resided during the requisite period. He has not offered proof that he himself resided in the United States during that time. He has further failed to indicate whether there were periods of time during the requisite period when he did not see the applicant.

As is stated above, 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. at 79-80. Here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations individuals, which are not consistent with other evidence in the record, particularly with regards to his employment and his date of entry into the United States. Though he

submitted additional evidence with his appeal, it is not sufficient to overcome inconsistencies in previously submitted evidence such that it allows the applicant to establish, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

The absence of sufficiently detailed, consistent 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 in evidence found in the record 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.