

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

41

FILE: [REDACTED]  
MSC-05-237-16588

Office: NEW YORK

Date: **JUL 02 2008**

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. 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. In her Notice of Intent to Deny (NOID), 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 granted the applicant 30 days within which to submit additional evidence in support of his application. In her decision, dated August 28, 2006, the director noted that she received evidence in support of his application in response to her NOID. However, she found that the additional evidence, affidavits, were not credible or amenable to verification. She noted that though her office attempted to call several of the affiants, it was unsuccessful in reaching any of them. Therefore, the director found the applicant failed to overcome her reasons for denial as stated in her NOID, and she denied the application.

On appeal, the applicant asserts that he has satisfied his burden of proof. He submits a brief 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) 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 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 applicant 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.

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 May 25, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since their first entry, the applicant showed his address in the United States during the requisite period to be [REDACTED] in New York, New York from May 20, 1981 until July 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period that occurred when he went to Sri Lanka to see his ill father from November 15, 1986 until December 5, 1986. 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 was employed as a laborer at [REDACTED] Meat Market in Staten Island, New York from July 1981 until July 1990.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that employment letters should contain an applicant's 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.

Here, the applicant initially submitted the following evidence that is relevant to his residence in the United States during the requisite period with his Form I-687:

1. An affidavit submitted by the applicant that was notarized on May 10, 2005. The applicant states that he entered the United States as a crew member on May 20, 1981 and that his first residence in the United States was at [REDACTED] in New York City where he lived for the duration of the requisite period. He asserts this apartment was owned by Andrew Guisto and that he signed a lease for this apartment on May 20, 1981 and that he resided there with a friend named [REDACTED]. He states that he was employed by [REDACTED] Meat Market for the duration of the requisite period. He goes on to say that he was absent from the United States from November 26, 1986 until December 25, 1986 when he went to Sri Lanka to see his sick father. He asserts that he applied for legalization during the original filing period on July 14, 1987 but was turned away because an immigration officer informed him that his absence from the United States caused him to be ineligible for that benefit. He further states that he does not have many of the documents that he would have submitted because many of his documents were in Tangall, Sri Lanka and were destroyed by a tsunami.

Crewman's Landing Permits:

2. A Form I-95A Crewman's Landing Permit showing that the applicant was not given permission to land temporarily at United States Ports on January 2, 1981.
3. A Form I-95A Crewman's Landing Permit showing the applicant was seen by an Immigration Officer in Norfolk, Virginia who stamped this permit on May 19, 1981. This permit shows the applicant's period of authorized stay was 29 days.

Affidavits:

4. An affidavit from [REDACTED] that was notarized on December 15, 2005. The affiant stated that he is the owner of [REDACTED] Meat Market in Staten Island, New York. He states that this business was operational from 1974 to 1994 and is now closed. He goes on to say that he employed the applicant from July 1981 until July 1990. He also states that the applicant was absent from November 26, 1986 until December 25, 1986 when he went to see his father who was ill. The affiant asserts that he wrote a letter for the applicant in 1987 verifying the applicant's employment and that the applicant intended to submit with this letter with his application for legalization. He states that the applicant was turned away when he attempted to submit this application. This employer does not state whether the information regarding the applicant's dates of employment was taken from official records or how he is able to verify these dates of employment. This employment letter is lacking with regards to the criteria that employment verification letters must possess pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3)(i) as noted above. Therefore, it carries minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.

- With this affidavit the affiant submitted the following:

- i. A photocopy of a notarized business certificate showing that [REDACTED] Meat Market was operating in Staten Island as of May 30, 1984 and that it was owned by [REDACTED]. This certificate shows that [REDACTED] moved his business to [REDACTED], Staten Island from [REDACTED] Staten Island. It is noted that though this document indicates that this place of business moved in 1984, the applicant indicated that he worked at this place of business located at [REDACTED] from 1981 until 1990.
  - ii. A photocopy of the identity page of [REDACTED] United States Passport issued to him on June 29, 1998.
5. An affidavit from [REDACTED] that was notarized on December 5, 2005. The affiant states that he owned a building containing apartments that is located at [REDACTED] in New York from 1980 to 1990. He goes on to say that he rented [REDACTED] to the

applicant from May 20, 1981 until July 1990. He states that he does not have a copy of the lease agreement, but that he remembers that the applicant resided in the apartment at that time. Here, the affiant fails to indicate how he is certain of the specific day that the applicant signed a lease for an apartment nearly 25 years previously. He does not indicate the frequency with which he saw the applicant or whether there were periods of time during the requisite period when he did not see the applicant.

6. An affidavit from [REDACTED] that was notarized on November 22, 2005. The affiant states that he met the applicant in 1981 at his mother's residence in Staten Island, New York. He states that his mother has since passed away, but that he personally knows that the applicant was one of a group of volunteers who went to the affiant's mother's home to clean donated items that would then be taken to a thrift store to sell to raise money for needy children. He states that he did such work from 1981 until 1989. He goes on to say that he is aware that the applicant resided in New York and worked in Staten Island from 1981 until 1990. The affiant fails to indicate how he is certain of the years the applicant worked as a volunteer with the affiant's mother. Though he states he is aware of the applicant's residence and employment in the United States during the requisite period, he does not indicate how he became aware of either. He fails to indicate the frequency with which he saw the applicant during the requisite period or to state whether there were periods of time during that period when he did not see the applicant.
7. An affidavit from [REDACTED] that was notarized on May 15, 2005. This affiant states that he is a citizen of Canada who has resided in Canada since 1977. He goes on to say that he met the applicant through a friend in Sri Lanka. He does not indicate when or where he met the applicant, however. The affiant states that in December 1986 the applicant came to stay with him in Canada. He goes on to say that the applicant informed him that he had gone to see his father in Sri Lanka who was ill and that he had left New York on November 26, 1986 for this purpose. He further states that the applicant left Canada for New York on December 24, 1986. This affiant also states that he is aware that the applicant resides in New York. Here, the affiant does not state that he personally knows that the applicant resided in New York during the requisite period. Though he states that he knows the applicant traveled to Sri Lanka during the requisite period, he does not state how he is certain of the specific dates of the applicant's travel nearly 20 years previously.

The director issued a Notice of Intent to Deny (NOID) to the applicant on June 23, 2006. In her NOID, the director stated that though the applicant submitted affidavits in support of his claim of having resided continuously in the United States in an unlawful status for the duration of the requisite period, these affidavits were not credible or amenable to verification. She noted that he submitted affidavits from [REDACTED] and [REDACTED], but stated that none were submitted with identity documents for the affiants, phone numbers at which CIS could contact the affiants to verify information in their affidavits, proof that the affiants were present in the United States during the requisite period, or proof that the affiants had personal knowledge of the events to which they were attesting. She stated that because of this, the affidavits the applicant submitted

were not sufficient to enable him to prove that he maintained continuous residence in the United States for the duration of the requisite period. She granted him 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted a letter and the following evidence that is relevant to the requisite period:

1. A declaration from the applicant that states that he is submitting further evidence in support of his application. He submits telephone numbers for the affiants from whom he previously submitted affidavits.
2. A photocopy of the previously submitted affidavit from [REDACTED] submitted with the following:
  - a. A photocopy of a Business Certificate showing that as of January 17, 1977, the [REDACTED] [sic.] Meat Market was operating at [REDACTED] in New Brighton, Richmond.
  - b. A photocopy of the previously submitted business certificate showing that the [REDACTED] Meat Market was moved to [REDACTED] in Staten Island, New York. This certificate was notarized on May 30, 1984.
  - c. A photocopy of his previously submitted identity page of the affiant's passport.
  - d. A photocopy of [REDACTED]'s New York State Driver License issued to him in January 2004.
  - e. A photocopy of a request for [REDACTED]'s Tax Return earnings and a corresponding photocopy of a print out for [REDACTED]'s FICA earnings that indicate that he had earnings for all years from 1972 until 1993 with the exception of the years 1976 and 1990.
3. An affidavit from [REDACTED] that was notarized April 4, 2006. This affiant states that [REDACTED] is his Uncle. He goes on to say that he himself arrived in the United States in 1978. He states that he remembers that [REDACTED] Meat Market was operational when he arrived in the United States. Though [REDACTED] has submitted a Business Certificate indicating that the business moved in 1984, this affiant states that this business was located at [REDACTED] Staten Island from 1981 until 1994. The affiant states that 25 to 30 employees worked in the Meat Market.
4. A photocopy of the previously submitted affidavit from [REDACTED] that was submitted with the following:

- [REDACTED]
- a. A photocopy of [REDACTED]'s New York Driver License issued to him on November 19, 2003.
5. A photocopy of the previously submitted affidavit from [REDACTED] that was submitted with the following:
- a. Proof that [REDACTED] Kitchen's, Inc. has existed in New York since January 20, 1960 and proof that [REDACTED] is the owner of this business.

The director denied the application for temporary residence on August 28, 2006. In denying the application, the director stated that though she received additional evidence from the applicant in response to her NOID, that evidence was not sufficient to overcome her grounds for denial. Specifically, she stated that though the applicant supplied evidence that [REDACTED] operated a business during the requisite period, he provided no evidence that the applicant worked for him such as employment records or pay stubs. The director noted that though her office attempted to call [REDACTED] more than once, these attempts were unsuccessful. Therefore, the director found his affidavit was not credible or amenable to verification. The director went on to say that though affiant [REDACTED] claimed to have owned the apartment building that the applicant resided in during the requisite period, he failed to provide either a copy of the applicant's lease or rent receipts issued to the applicant. The director noted that though her office attempted to contact this affiant, these attempts were unsuccessful. The director went on to say that affiant [REDACTED] did not provide evidence that he was present in the United States during the requisite period or any evidence that he had direct personal knowledge of the events surrounding the applicant's residency. The director noted that he failed to submit identity documents and that the director's office was unsuccessful when it tried to contact this affiant. The director stated that given the above, the applicant failed to establish that he resided in the United States for the duration of the requisite period by a preponderance of the evidence. Therefore, the director denied the application.

On appeal, the applicant asserts that he has submitted sufficient evidence to meet his burden of proof. He states that the director did not properly adjudicate his claim. He submits the following evidence in support of his appeal:

1. A brief in which he states that he has resided in the United States since May 20, 1981. He states that he attempted to file for legalization during the original filing period on January 14, 1988 but was rejected at that time because of a brief trip abroad when he went to Sri Lanka to see his ill father after November 1987. It is noted that the applicant previously stated that he originally attempted to file for legalization on July 14, 1987 and was turned away. It is also noted here that the applicant has stated that his only absence from the United States during the requisite period was from November to December of 1986, which is before November 1987. He argues that the previously submitted documents were credible and are sufficient to meet the applicant's burden of proof. He criticizes CIS for attempting to verify affidavits by calling at the telephone numbers

which he supplied, stating that CIS could not be certain that the individuals who submitted the affidavits would answer the telephone if those numbers were called. He argues that CIS should have sent letters to verify information in the affidavits. He states that [REDACTED] telephone was not in service because this telephone was a telephone that he had used for more than 50 days.

He resubmits the following documents:

2. A photocopy of the applicant's Crewman's Landing Permits that he previously submitted;
3. A photocopy of an affidavit from [REDACTED] that was notarized December 15, 2005;
4. A photocopy of a Business Certificate for the [REDACTED] [sic.] Meat Market notarized on January 17, 1977;
5. A photocopy of a Business Certificate for the [REDACTED] Meat Market notarized on May 30, 1984 showing that the business moved locations;
6. A photocopy of the identity page of a United States Passport issued to [REDACTED] on June 29, 1998;
7. A photocopy of a New York State Driver License issued to [REDACTED] on January 26, 2004;
8. A photocopy of [REDACTED]'s FICA earnings for the years 1972 to 1993;
9. A photocopy of an affidavit from [REDACTED] that was notarized on December 5, 2005;
10. A photocopy of an affidavit from [REDACTED] that was notarized on November 22, 2005;
11. Proof that [REDACTED] owned [REDACTED] Kitchen's Incorporated beginning on January 20, 1960;
12. An affidavit from [REDACTED] that was notarized on May 15, 2005;
13. And an affidavit from [REDACTED] that was notarized April 4, 2006.

He submits the following documents that were not previously submitted:

14. A photocopy of a New York Driver License issued to [REDACTED] on April 16, 2001;

15. And a photocopy of the Canadian Immigration Identification Card issued to [REDACTED] [REDACTED] that shows he is a landed immigrant in Canada.

The AAO has reviewed all of the documents submitted by the applicant in support of his application and finds that the director was correct in determining that the applicant failed to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. The employment letter he has submitted is lacking with regards to regulatory requirements for such letters found in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] does not state that how he was able to verify the applicant's dates of employment with his place of business. No employee records or pay-stubs were submitted as proof of the dates of the applicant's employment. Similarly, though the applicant has submitted an affidavit from his former landlord, [REDACTED] neither the applicant nor the landlord has retained leases for that rental. This affiant fails to state how, in the absences of these leases, he is able to confirm the applicant's May 20, 1981 start date as his tenant. This affiant does not state whether there were periods of time during the requisite period when he did not see the applicant or to note the frequency with which he saw the applicant during that time. Similarly, [REDACTED] states that he knows that the applicant helped his mother as a volunteer. However, he fails to state how he is able to confirm the applicant's start date as a volunteer. He does not state the frequency with which he personally saw the applicant to indicate whether there were periods of time during the requisite period when he did not see the applicant. Though the applicant has submitted affidavits in support of his application, they are not sufficiently detailed to allow the applicant to satisfy his burden of establishing that he resided continuously and unlawfully in the United States for the duration of the requisite period by a preponderance of the evidence.

Though the applicant submitted identity documents for two affiants from whom he previously submitted affidavits with his appeal, these documents do not allow him to satisfy his burden as the affiants from whom he submitted these documents did not state that they were personally aware of the applicant's residence in the United States during the requisite period.

Though the applicant argues in his appeal that CIS should not have contacted the affiants from whom he submitted affidavits by telephone, the applicant is not persuasive. Though he is correct in stating that the regulations do not specify the means by which CIS should verify documents, the applicant supplied CIS with the phone numbers that CIS used to attempt to contact the affiants.

Further, it is noted that the applicant states in his appeal brief that his absence in the United States was after November 1987, when he previously stated and submitted supporting documents as proof that his absence from the United States was in November 1986. Similarly, the applicant has stated in his appeal brief that he attempted to file for legalization on January 14, 1988 when he has also submitted a notarized affidavit in which he stated that he first attempted to file for legalization on July 14, 1987.

In this case, the absence of credible and probative documentation that is sufficiently detailed and amenable to verification 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.