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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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41

[REDACTED]

FILE:

[REDACTED]

Office: NEWARK

Date:

**JUL 28 2008**

MSC-06-089-11902

IN RE:

Applicant:

[REDACTED]

APPLICATION:

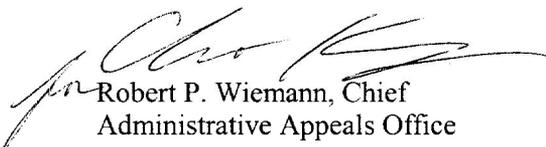
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that there were inconsistencies in the Form I-687, supporting documentation and testimony provided by the applicant. The director also found that the affidavits submitted by the applicant were insufficiently detailed to satisfy the applicant's burden of proof.

On appeal the applicant, through counsel, disputes the director's finding but does not address the inconsistencies that exist in the record.

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. See 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).

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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 28, 2005. The information contained in the Form I-687 application conflicts with other evidence in the record including witness affidavits. The information contained in the Form I-687 application also conflicts with information provided by the applicant in another Form I-687 application that he submitted in 1990.

Part #30 of the Form I-687 application asked applicants to list all residences in the United States since first entry. On the instant Form I-687 application the applicant listed his address as [REDACTED] from 1981 until 1990. However, on the Form I-687 application submitted by the applicant in 1990, he listed his address as [REDACTED] Chicago, IL from May 1981 until August 1989. This material inconsistency detracts from the credibility of the applicant’s claim.

Part #32 of the Form I-687 application asked applicants to list all absences from the United States since January 1, 1982. On the instant Form I-687 application, the applicant listed one absence from May to June 1986 and one absence in December 1993. As noted by the director, this conflicts with the information provided by the applicant on his previously submitted Form I-687 application in which he listed one absence from September 1987 to October 1987.

Part #33 of the Form I-687 application asked applicants to list all employment in the United States since January 1, 1982. On the instant Form I-687 application, the applicant listed employment with S.P. Deli from 1981 until 1990. The record also contains an affidavit from [REDACTED] in which the affiant states that he met the applicant in 1982 when the applicant was employed at S.P. Deli. However, the applicant did not list employment at S.P. Deli on the Form I-687 application that he submitted in 1990. There he indicated that he was self employed

selling paper and washing cars from June 1981 until August 1989. The next employment listed on the previously submitted Form I-687 application was at Dunkin' Donuts from August 1989 until "present." The employment at Dunkin' Donuts is not listed on the instant Form I-687 application. These material inconsistencies also detract from the credibility of the applicant's claims.

In addition, the applicant testified before an immigration officer on September 21, 2006 that he first entered the United States in April of 1980. However, the record contains a "Form for Determination of Class Membership in CSS v. Meese" signed and sworn to by the applicant in 1990 in which he claims to have first entered the United States on April 21, 1981 with a non-immigrant visa. The record also contains an affidavit signed by the applicant on April 9, 1990, in which the applicant claims to have entered the United States for the first time in December 1981, without inspection.

The applicant has failed to resolve these discrepancies. He has also failed to resolve additional discrepancies noted by the director. Specifically, the director noted that the applicant filed a Form I-485 Application to Adjust Status in which he listed the date of his last arrival as November 5, 1988. The applicant did not list this absence from the United States on his Form I-687 applications. The director also noted that the applicant submitted a marriage certificate which lists an address in India as the applicant's usual place of residence at the time of marriage. As the marriage took place in 1984, this conflicts with the applicant's claim to have been residing in the United States at the time.

The applicant also submitted the following affidavits in support of his application:

- Affidavit of [REDACTED] signed and notarized on September 19, 2006. The affiant states that the applicant came to the United States in April of 1980 and that the applicant visited him often. The affiant does not claim to have personal knowledge of the applicant's residence during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on November 12, 2002. The affiant states that he met the applicant in 1982 when the applicant was employed by SP Deli in [REDACTED]. As noted above, this conflicts with information provided by the applicant in his previously submitted Form I-687 application. Beyond that, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has provided contradictory statements regarding the date of his first entry into the United States and his addresses and employment during the relevant period. The applicant has also not provided sufficient evidence in support of his claim of residence in the United States relating to the entire 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 contradictory information in the record and the applicant's 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.