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**U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED]  
MSC-05-052-10186

Office: LOS ANGELES

Date: **MAR 03 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:

[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, Los Angeles. 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. 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. The director raised questions regarding apparent inconsistencies among written and oral statements made by the applicant, and other issues related to the applicant's credibility.

On appeal, the applicant attempted to explain an apparent inconsistency raised by the director. The applicant also attempted to explain the circumstances of his initial filing of a Form I-687 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)(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 November 22, 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 listed the following addresses during the requisite period:

[REDACTED], Costa Mesa, California from February 1981 to August 1985; and [REDACTED], Costa Mesa, California from September 1985 to November 1990.

At part #33 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed only the Los Angeles Buddhist Vihara, Los Angeles, California from January 1981 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following absences during the requisite period: A trip to Canada for an emergency from May 1987 to June 1987; and a trip to Sri Lanka for his father’s death from September 1987 to September 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Self-employed (part-time

mechanic) from February 1981 to May 1991; fork lift mechanic for [REDACTED] from January 1982 to September 1987; and custodian for "Beverly Hills Capital Inc." from March 1982 to December 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant provided an affidavit dated September 23, 2001 from [REDACTED] Chief Incumbent of the Los Angeles Buddhist Vihara. This affidavit states that the applicant "has taken his very valuable time and donated money to the temple since January 1981." This affidavit does not confirm that the applicant resided in the United States during the requisite period.

The applicant provided another affidavit from [REDACTED] dated December 29, 2003. The affiant explained that he is the Chief Monk of the Los Angeles Buddhist Vihara, and that he met the applicant in Sri Lanka when the applicant was a teenager. The affiant stated that he has personal knowledge that the applicant came to the United States in January 1981 because the applicant started coming to the temple in Los Angeles at least twice per month. The applicant has been affiliated with the temple since January 1981. This affidavit does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affidavit does not state the address where the applicant resided during the requisite period.

The applicant also provided an affidavit from [REDACTED] in which the affiant stated that he has known the applicant since March 1982. The affiant met the applicant at a friend's house. Since that time, whenever the affiant needed him for any kind of work, the applicant was always available. After the affiant moved to different locations the applicant never forgot to come and visit the affiant. This affidavit does not state whether the applicant was in the United States at the time the affiant met him, yet the applicant provided evidence tending to show that the affiant resided in the United States continuously throughout the requisite period. This tends to indicate that the affiant met the applicant in the United States. However, the affidavit does not specifically confirm the applicant's continuous residence in the United States during the requisite period. In addition, the affidavit lacks detail regarding the applicant's addresses and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] which stated that the affiant has known the applicant since May 1983 because the applicant came and helped the affiant "to do [his] landscape, gardening and hose [sic] hold work." This affidavit fails to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated November 23, 2001, in which the affiant stated that he has been acquainted with the applicant in California since 1984. The affiant stated that the applicant was a frequent guest at the affiant's apartment in California during the Los Angeles Summer Olympics of 1984. This affidavit fails to provide details regarding how the

applicant and the affiant met, where the applicant resided during the requisite period, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States from 1984 until the end of the requisite period.

The applicant submitted a declaration dated December 31, 2001 from [REDACTED] in which the declarant stated that he has known the applicant since February 1988 when they resided in the same neighborhood. The declarant stated that he met the applicant at Sunday mass at Our Lady of Perpetual Help Church in Whittier. This declaration is inconsistent with the applicant's Form I-687, where the applicant failed to list any church when asked to list all affiliations or associations with churches. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] in which the declarant stated that he has known the applicant since January 1987. The declarant stated that he first met the applicant at the applicant's "residents [sic]" in Costa Mesa, California through a mutual friend. The declarant stated that he and the applicant continue to meet at each other's residence and at other functions. This declaration does not specifically confirm that the applicant resided in the United States other than during January 1987.

The applicant provided an affidavit from [REDACTED] in which the affiant stated that he has known the applicant since June 1986 and has gathered together with the applicant at the affiant's mother's house "most [sic] of the weekends." This affidavit does not specifically confirm that the applicant resided continuously in the United States during the requisite period. Although the affiant stated that he gathered with the applicant at the affiant's mother's house "most weekends", the affiant did not indicate that his mother resided in the United States throughout the requisite period. The affiant also failed to provide details regarding how he met the applicant and where the applicant resided during the requisite period. As a result, this affidavit is also found to lack sufficient detail to confirm that the applicant resided in the United States from June 1986 until the end of the requisite period.

The record also includes an affidavit from [REDACTED] dated May 15, 1991 in which the affiant stated that he has known the applicant for ten years. The affiant stated that the applicant "came in 1981[.] [The applicant] went back to Sri Lanka[.] [The affiant] took hem [sic] to Canada . . . . After he return in [sic] U.S.A.: on September 30, 1987[illegible] . . . ." This affidavit fails to include details regarding how the applicant met the affiant, the frequency of contact between them during the requisite period, the applicant's address during the requisite period, and how the affiant came to take the applicant to Canada. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The record also includes an additional Form I-687 application submitted by the applicant on February 8, 1991 to the Miami District Office of the Immigration and Naturalization Service (INS), currently CIS. At part #16 of the Form I-687 where applicants were asked to list when

they last came to the United States, the applicant listed the date July 28, 1987. At part #21 where applicants were asked to list their father's name and indicate whether their father is living or deceased, the applicant listed his father's name and indicated his father died in 1987. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses: [REDACTED] Costa Mesa, California from January 1, 1982 to March 30, 1986; and [REDACTED] Costa Mesa, California from April 1, 1986 to November 30, 1990. This information is inconsistent with the current Form I-687, where the applicant indicated he lived at [REDACTED] from February 1981 to August 1985 instead of at [REDACTED] from April 1986 to November 1990; and where the applicant indicated he lived at [REDACTED] from September 1985 to November 1990 instead of from January 1982 to March 1986. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period. In addition, the fact that the 1991 application lists addresses for the applicant in the United States beginning only on January 1, 1982, calls into question the applicant's claim to have resided in the United States throughout the requisite period, from before January 1, 1982 until the date the applicant attempted to apply for temporary resident status. At part #35 where applicants were asked to list absences from the United States since entry, the applicant listed only a trip to Sri Lanka for a family emergency from July 1, 1987 to July 28, 1987. This information is inconsistent with the current Form I-687, where the applicant listed no absences in July 1987 and listed absences from May to June of 1987 and during September 1987. Neither of these absences were listed on the 1991 Form I-687. This inconsistency also calls into question the applicant's claim to have resided in the United States continuously throughout the requisite period. At part #36 where applicants were asked to list all employment in the United States since first entry, the applicant listed only the following positions: Self employed mechanic from August 10, 1984 to present, and fork lift mechanic for [REDACTED] (part time) from January 15, 1982 to October 19, 1987. This information is inconsistent with the current Form I-687 in which the applicant also indicated he worked as a custodian for "Beverly Hills [sic] Capital Inc." from March 1982 to December 1988. This inconsistency also calls into question the applicant's claim to have resided in the United States continuously throughout the requisite period. At part #46, the applicant appears to have signed the Form I-687 under penalty of perjury.

A Form for Determination of Class Membership in CSS v. Meese was attached to the applicant's 1991 Form I-687 and was signed by the applicant under penalty of perjury on February 2, 1991. At part #9, where applicants were asked to list information regarding each trip abroad, the form indicates that the applicant departed from the United States to Sri Lanka on July 1, 1987. When asked at part #9(d) for the purpose of the trip, the form states, "My father had a major operation and a day later he passed away." This information indicates the applicant's father died either before or during the applicant's trip to Sri Lanka that took place in July 1987. This is inconsistent with the applicant's statements in his current Form I-687, where the applicant indicated that he took a trip to Sri Lanka in September 1987 because of his father's death and where, as mentioned above, he failed to list a trip during July 1987. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

The record indicates that the applicant spoke with an immigration officer under oath on February 8, 1991, the date that the applicant submitted his application to the Miami District Office. The record also includes a photocopy of the applicant's driver's license, indicating that the officer properly identified the individual before her as the applicant by asking him to present photo identification. The record indicates that the applicant stated under oath that his initial entry into the United States was on January 1, 1982. The officer indicated in the record that the applicant was, therefore, statutorily ineligible under the CSS/Newman Settlement Agreement. The officer indicated that, despite his statutory ineligibility, the applicant had expressed his desire to proceed with the filing. As a result, the officer accepted the application. This information is inconsistent with the information listed on the current Form I-687, where the applicant indicated he began residing in the United States on February 1, 1981, rather than that he did not enter the United States until January 1982. This inconsistency calls into question the applicant's claim to have resided in the United States throughout the requisite period. This information also casts serious doubt on the applicant's claim to meet the requirements for temporary resident status, which include the requirement that the applicant must have resided in the United States since *before* January 1, 1982. The applicant's statement under oath indicates that he did not enter the United States until January 1, 1982 and, therefore, that he is not eligible for temporary resident status on this basis.

In denying the application the director noted 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 raised questions regarding apparent inconsistencies among written and oral statements made by the applicant, and other issues related to the applicant's credibility. Specifically, the director stated that the applicant indicated in an interview at the Los Angeles District Office that he never filed for any immigration benefits in states other than Washington and California. The director stated that this information conflicted with the record, which indicates that the applicant applied for temporary resident status with the Miami District Office. The director also explained that the 1991 Form I-687 included a class member determination form indicating that the applicant first entered the United States on January 1, 1982.

On appeal, the applicant attempted to explain an apparent inconsistency raised by the director. The applicant also attempted to explain the circumstances of his initial filing of a Form I-687 application. Specifically, the applicant stated that he met a person named [REDACTED] at a Sri Lankan festival. [REDACTED] told the applicant about an attorney who prepared applications under the CSS/Newman Settlement Agreements. The applicant met this individual, identified as [REDACTED]. [REDACTED] handed the applicant the Form I-687 and told him to quickly fill out the form by hand. The attorney explained that the applicant needed to list the addresses where he had lived beginning on January 1, 1982. The applicant filled out the form as quickly as possible, taking approximately ten minutes. The applicant paid [REDACTED] \$500.00 and was told by [REDACTED] that he would take care of everything. The applicant never received a receipt or an interview notice from INS. The applicant stated "I was not even sure if my case had actually been filed." The applicant stated that he failed to indicate in his interview in Los Angeles on June 2, 2006 that he

had not filed for temporary resident status in Miami because he did not know if the case had actually been filed with INS by [REDACTED]. This information is inconsistent with the record, which indicates that the applicant was present when the application was submitted; stated under oath that he did not enter the United States until January 1, 1982; and confirmed his desire to submit the application despite his statutory ineligibility. This inconsistency casts serious doubt on the applicant's explanation of his failure to indicate he had filed for temporary resident status at the Miami District Office and, as a result, on the applicant's claim to have resided in the United States throughout the requisite period.

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 that do not confirm that the applicant resided continuously in the United States during the requisite period, do not conform to regulatory standards, lack sufficient detail, or are inconsistent with the current Form I-687 application.

The affidavits from [REDACTED] from 2001, from [REDACTED], and from [REDACTED] all fail to confirm that the applicant resided continuously in the United States during the requisite period. The 2003 affidavit from [REDACTED] does not conform to regulatory standards. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail. The declaration from [REDACTED] is inconsistent with the Form I-687. The declaration from [REDACTED] fails to confirm that the applicant resided in the United States at any other time than during January 1987.

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 contradictions among the applicant's written and oral statements, and given 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.