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**U.S. Citizenship  
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Services**

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FILE:



Office: NEW YORK

Date:

**APR 30 2008**

MSC-05-292-11758

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Acting District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant 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. Specifically, the director noted that a biographic information Form G-325A indicated that the applicant stated previously to Citizenship and Immigration Services (CIS) or the Service, that he resided in Yemen from his date of birth until June, 1995. The director noted that on August 30, 2000 the applicant appeared for a STOKES interview in her office and testified that he had never entered the United States until 1995 at the time of that interview. Therefore, the director found that the applicant failed to meet his burden of proving that he entered the United States prior to January 1, 1982 and then resided continuously in the United States for the duration of the requisite period. Because the director found the applicant had not met his burden of proof she found he was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Therefore, she denied the application.

On appeal, the applicant submits a brief in which he refutes the Service's claim that evidence in the record establishes that he was not present in the United States until 1995. He states that the director failed to consider two affidavits submitted in support of his application. He asserts that the director's decision is an abuse of discretion.

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 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 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 July 19, 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 address in the United States during the requisite period to be: [REDACTED] in Brooklyn, New York from December 1981 until June 1989. It is noted that the applicant indicated on this form that from June 1989 until July 1995 he resided in Yemen. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that during the requisite period, he was absent from the United States

from June until July 1987 he traveled the Yemen because of his father's death. 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 by Lion Leather Products in Brooklyn, New York as a salesperson from January 1982 until January 1985 and then by Jewel Tree, Inc. in Astoria, New York as a salesperson from March 1985 until April 1988.

In the record is a Form G-325A biographic information sheet submitted by the applicant at the time he was applying for adjustment of status to that of a permanent resident. This form was signed by the applicant on August 13, 1997. On this form, the applicant indicated that he resided in Alnadera, Yemen from his date of birth until June 1995. This Form G-325A indicates that the applicant did not reside in the United States for any part of the requisite period.

The record shows that at the time of his STOKES interview, the applicant indicated that his first entry into the United States was on July 27, 1995 when he entered the United States with a B-2 visa. This testimony indicates that the applicant did not reside in the United States during the requisite period.

Also in the record is a sworn statement taken from the applicant on January 18, 2006 at the time of the applicant's interview with a CIS officer pursuant to his Form I-687 application. In this sworn statement, the applicant states that he first entered the United States from Canada in December 1981 without inspection. He goes on to say that he left the United States in June 1987 to visit Yemen and then returned to the United States on June 27, 1995. It is noted here that on his Form I-687 the applicant indicated that he left the United States for only one month in 1987 and then resided in the United States for two years before returning to Yemen in June 1989 until 1995. That the applicant was not consistent regarding when he resided in and was absent from the United States casts doubt on whether the applicant resided in the United States for the duration of the requisite period.

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).

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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).

Here, the applicant submitted two affidavits that were relevant to the requisite period in support of his application. Details of these affidavits are as follows:

- An affidavit from [REDACTED] that was notarized on January 3, 2006. In this affidavit the affiant states that the applicant was physically present in the United States from December 1981 until June 1989. The affiant asserts that he has lived in the United States since 1973. Here, though the affiant states that he has resided in the United States since 1973, he fails to submit evidence that he resided in the United States for the requisite period or to submit documents as proof of his identity. He further fails to indicate where he met the applicant or how he knows that the applicant began residing in the United States in 1981. He does not indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period that he did not see the applicant. He does not indicate he personally knows where the applicant resided during the requisite period. This affidavit was not submitted with a phone number at which the affiant can be contacted to verify information contained in it. Because this affidavit is not amenable to verification and because it is significantly lacking in detail, it can only be accorded minimal weight in proving that the applicant was present in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on December 29, 2005. In this affidavit the affiant states that the applicant was physically present in the United States from December 1981 until June 1989. The affiant asserts that he has lived in the United States since 1970. Here, though the affiant states that he has resided in the United States since 1970, he fails to submit evidence that he resided in the United States for the requisite period or to submit documents as proof of his identity. He further fails to indicate where he met the applicant or how he knows that the applicant began residing in the United States in 1981. He does not indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. He does not indicate he personally knows where the applicant resided during the requisite period. This affidavit was not submitted with a phone number at which the affiant can be contacted to verify information contained in it. Because this affidavit is not amenable to verification and because it is significantly lacking in detail, it can only be accorded minimal weight in proving that the applicant was present in the United States during the requisite period.

It is noted that the applicant also submitted an employment letter from the Farmer in the Deli which asserts that the applicant has worked at that establishment from 2001. However, the issue in this proceeding is whether the applicant resided continuously in the United States during the requisite period, which ended on May 4, 1988. Therefore, because this letter verifies the applicant's presence in the United States subsequent to the requisite period, it is not relevant evidence for this proceeding.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 1, 2006. In her NOID, the director stated that the applicant's statement and sworn statement in which he stated that he left the United States in June 1987 and did not return until June 1995 represented a break in residence in excess for forty-five (45) days during the statutory period. The director also noted that the applicant did not assert that his return to the United States was delayed due to emergent reasons. The director found that this indicated the applicant was not eligible to adjust status to that of a temporary resident. However, the director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted a statement that is undated. In this statement, the applicant asserts that both at the time of his interview and on his Form I-687 he stated that he was only absent for one month, from June to July 1987 and that he then left the United States in June 1989 and then returned on June 27, 1995. It is noted here that the previously noted sworn statement in the record indicates that at the time of the applicant's interview, that was conducted with the use of [REDACTED], an interpreter who spoke the Arabic language, he stated that he first left the United States in June 1987 and then reentered the United States from Yemen on June 27, 1995. The applicant states that though he signed a sworn statement at the time of his interview and though an Arabic speaking interpreter was used at the time of his interview it was not made clear to him what he was signing when he signed the sworn statement. It is again noted that the applicant's sworn statement indicates that his testimony was translated before he signed this statement. The interpreter, the applicant and the officer signed this statement.

The applicant goes on to say that language difficulties caused misunderstandings at the time of the applicant's interview with the Service. The applicant contends that his absence from the United States in 1987 was for fewer than forty-five (45) days.

The applicant did not submit additional evidence for consideration in response to the director's NOID.

In denying the application, the director noted that that her office received the applicant's statement in response to her NOID in a timely manner. However, she found that this statement was not sufficient to overcome the director's grounds for denial. She went on to say that the applicant's interview was conducted with a qualified interpreter who competently translated all written and oral statements made by the applicant during the interview. The director also referred to the applicant's Form G-325A that he submitted on August 13, 1997 and his

subsequent STOKES interview conducted on August 30, 2000 in which he stated that he entered the United States for the first time in the year 1995. The director found that this evidence in the record, when considered with the applicant's testimony at the time of his interview, caused the applicant to fail to demonstrate by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a seven page brief on which he asserts that he entered the United States before January 1, 1982 and then resided continuously in the United States from that time and then for the duration of the requisite period with only one absence in 1987 that occurred because an emergency and was for less than forty-five (45) days. He goes on to say that he was asked to sign a statement at the time of his interview that he did not understand because it was in English. He asserts that though an interpreter was used, his sworn statement was not read back to him.

The applicant goes on to assert that his Form G-325 contained a typographical error. He states that during his STOKES interview he was only asked about his last entry in the United States which was in 1995. It is noted here that the record shows that the applicant stated that his last entry into the United States was in 1998 and his first entry into the United States was in 1995 at the time of his STOKES interview.

The applicant correctly asserts that the director did not address the affidavits he submitted in support of his application. He goes on to correctly assert that applications submitted solely with credible, verifiable affidavits can be considered sufficient to satisfy an applicant's burden of proof. However, in this case, the AAO finds that the affidavits submitted by this applicant are not verifiable and for reasons previously noted, they do not carry sufficient weight to prove that the applicant resided continuously in the United States for the duration of the requisite period.

The applicant states that the inconsistencies noted by the director are insufficient to warrant a denial of his case. The applicant notes that he submitted affidavits and letters from employers in support of his application. However, the AAO notes that it is the applicant who bears the burden of providing sufficient evidence that is relevant to the requisite period. Here, the applicant submitted an employment letter that is not relevant to the requisite period.

The applicant states that the director failed to meet her burden of proving that his evidence was not sufficient to grant him temporary resident status. It is noted here that the director does not bear the burden of proof in this proceeding. Rather, an applicant for temporary resident status bears the burden of establishing that he or she is eligible for this benefit at the preponderance of the evidence, or more likely than not, standard. Therefore, this argument is not found relevant.

Lastly, the applicant asserts that the director abused her discretion when she denied his application. It is noted here that the Service is not authorized to deny applications for temporary resident status as a matter of discretion. It is further noted that the AAO does not find that the director denied the applicant as a matter of discretion in this case. Rather, it appears that the

applicant failed to meet his burden of proving that he resided continuously in the United States by a preponderance of the evidence for reasons previously noted.

In summary, the applicant has provided inconsistent testimony regarding his residence in and absences from the United States during the requisite period. Though he submitted two affidavits that are relevant to the requisite period, these affidavits were not amenable to verification and were significantly lacking in detail.

In this case, the absence of credible and probative documentation that is 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