

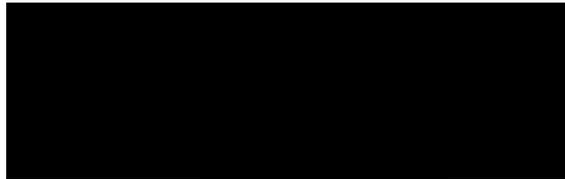
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**U.S. Citizenship
and Immigration
Services**

LI



FILE: [REDACTED]
MSC-05-235-12674

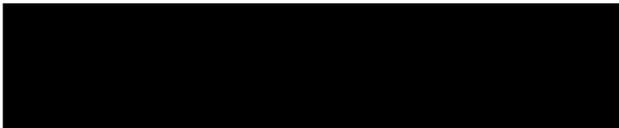
Office: LOS ANGELES

Date: AUG 15 2007

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:



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

The director denied the application, finding that the applicant had failed to establish that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988.

On appeal, the applicant submitted a declaration and a brief prepared by his attorney in support of his appeal. Both the declaration and the brief address the issues noted as discrepancies in the director's decision.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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.* 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 (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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously 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 on May 23, 2005. At part # 14 of his Form I-687 application the applicant stated that he previously applied for temporary residence as a legalization applicant in September 1987 in Fresno, California but that this application was denied. However, government records show no evidence of the applicant previously filing a Form I-687. The interviewing officer determined that the applicant was a CSS/Newman class member and adjudicated his case accordingly. By definition of the CSS Settlement Agreement, this means that the director determined that the applicant is someone who tendered a completed Form I-687 and fees to either an INS officer or QDE during the period from May 5, 1987 to May 4, 1988, but was 'front-desked' because an INS officer or QDE concluded that he had traveled outside the United States after November 6, 1986 without advance parole. Therefore, the assumption can be made that the intent of the statement in #14 of the applicant's Form I-687 is to state that he attempted to originally file for legalization in September of 1987 but was unable to submit his original Form I-687 and associated fee at that time.

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 first address in the United States to be in Calexico, California and states that he resided there from August 1981 to July 1987. Though the applicant claims to have remained in the United States until leaving in December 1987, he does not list an address in the United States at which he resided from August 1987 to December 1987. At part #32 of the same application, when the applicant is asked to provide a list of his absences from the United States, he showed an absence from December 1987 to March 1999. The applicant does not list any absences prior to his absence in December 1987. However, the interviewing officer's notes indicate an absence in July 1987.

At part #33 of the Form I-687 application when asked to provide the names, dates of employment, the applicant showed his first employment in the United States to be for [REDACTED] in "B. Springs" from August 1981 until July 1987.

Submitted with the applicant's Form I-687 in support of his claim of having established continuous residency in the United States are three letters.

The first letter submitted by the applicant is a letter on company letterhead from Sun Valley Harvest, Inc. signed by [REDACTED] and dated June 5, 2005. This letter states that the applicant worked for [REDACTED] as a farm laborer during harvesting seasons from 1981 to 1987. The letter states that because employees were paid in cash, there were no proper employment records available for employees such as the applicant.

The second letter submitted by the applicant is a letter dated November 2005 from [REDACTED] stating that [REDACTED] has known the applicant for 15 years. This letter states that the applicant lived with Ms. [REDACTED] from 1999 to 2001.

The third letter submitted by the applicant is signed by Frank Avila and is dated January 5, 2006. This letter refers to a call that [REDACTED] received from the applicant and the interviewing CIS officer on the date of the applicant's interview with that officer, December 6, 2005. This letter from [REDACTED] states that the caller contacted him to verify the validity of the previous letter he had signed on June 5, 2005, which stated that the applicant had worked for his company.

These three letters do not provide detailed substantive testimony sufficient to establish that the applicant resided continuously in the United States before January 1, 1982 until September 1987, when the applicant claims that he attempted to originally file his Form I-687.

The first letter submitted was signed by [REDACTED], whom the applicant states was his previous employer. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the 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

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.

Though the letter signed by [REDACTED] is on letterhead stationery, it does not list the applicant's specific dates of employment or his address at the time of employment. [REDACTED] indicated that the information was based upon his personal knowledge.

The second letter submitted by the applicant is signed by [REDACTED] in November 2005. This letter indicates [REDACTED] had known the applicant since 1990. This letter also states that the applicant lived with [REDACTED] from 1999 to 2000. However, because the letter states that its writer did not know the applicant until 1990, it does not establish a relationship between [REDACTED] and the applicant during the requisite period.

The third letter submitted by the applicant is a letter dated January 5, 2006, signed by [REDACTED]. This letter attempts to provide an explanation for [REDACTED]'s unwillingness to verify the applicant's employment with his company when the CIS officer contacted him. However, this letter does not satisfy the requirements of the regulation at 8 C.F.R. § 245a.2(d)(3)(i) because it does not provide the applicant's address at the time of employment; the exact period of employment; periods of layoffs; 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.

Further, though the June 5, 2005 letter states that because employees were paid in cash [REDACTED] has no documentation available with which he can verify the names of his employees, this second letter states that from August 1981 to November 1987 his company issued approximately 35,000 to 50,000 W-2 forms per year. The letter does not explain why a W-2 for the applicant is not available.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Thus, though on the application, which the applicant signed under penalty of perjury, he showed that he resided in Calexico, California from August 1981 to July 1987, he did not meet his burden of establishing by a preponderance of the evidence that he entered the United States prior to January 1, 1982, and thereafter resided continuously in the United States in an unlawful status, and was physically present in the United States from November 6, 1986, until September 1987, the date he attempted to originally file his Form I-687. 8 C.F.R. § 245a.2(b)(1).

It appears that the applicant initially attempted to file his Form I-687 in September 1987, during the original legalization application period of May 4, 1987 to May 4, 1988. Therefore, according to the CSS Settlement Agreement paragraph 11 at page 6 the date through which the applicant is required to establish that he had maintained continuous residence and continuous physical presence as a CSS/Newman class member is September 1987. However, though the absence occurred after that time, the director notes in her decision that the applicant stated under oath and subsequently signed a sworn statement in which he claims to have left the United States in December 1987 and remained outside of the United States until March 1999.

In denying the application the director stated the above, and though the applicant was not required to have maintained continuous residence in the United States after September 1987, the director additionally noted that the applicant's provided a signed, sworn statement stating that he left the United States on December 1987 and did not return until March 1999.

On appeal the applicant attempts to explain these contradictions. To do so, he furnishes a statement and his counsel also submits a brief. In both documents, the applicant explains the reasons for the inconsistencies between the employer he listed on his Form I-687 and the letter he submitted in support of that application from a different employer. The applicant also submits an explanation as to why his employer did not verify his employment when contacted. Lastly, though the absence occurred after the applicant attempted to originally file his Form I-687 and therefore it occurred after the period of time through which the applicant needed to have established both continuous residence and continuous physical presence in the United States, both the applicant's statement and the brief submitted by his counsel address the reasons for the applicant's departure from the United States from December 1987 to March 1999.

The brief submitted by the applicant states that though the applicant listed one company, [REDACTED] as his employer from 1981 to 1987 on his Form I-687 and provided supporting documentation from a second, different employer, Sun Valley Harvest Inc., stating the applicant had worked there during the same years, this is not a discrepancy. The brief explains that the applicant worked for two different contractors simultaneously because neither employed him full time. The applicant also asserts that he worked in the United States beginning in August 1981 and that he continued working both for Sun Valley Harvest and for [REDACTED] through July 1987 and then only for Sun Valley Harvest until November of 1987.

The brief further states that the applicant did not list Sun Valley Harvest Inc. as his employer on his Form I-687 application because he had submitted a letter from that company with his application. The brief goes on to explain that because he had submitted this letter, the applicant believed he had already submitted evidence of having worked for Sun Valley Harvest Inc. Therefore, he erroneously believed he did not have to list that company on his Form I-687. The brief explains the applicant listed [REDACTED] on his Form I-687 because there would have been no other way that CIS would have known that he had worked for that company otherwise.

The brief also asserts that though [REDACTED], the individual who signed the letter of employment verification submitted by the applicant, did not verify that the applicant worked for his company when contacted telephonically by the CIS officer, [REDACTED] did so because he was suspicious of the CIS officer and did not believe him to be legitimate.

Lastly, the applicant's brief states that though he stated under oath that he left the United States in December 1987 and did not return until March 1999, he was not given an opportunity to explain why he left the country. It goes on to explain that he left the United States because he learned that his father had suffered a cerebral hemorrhage and he needed to care for his father as he recovered. In support of this claim are medical documents regarding the applicant's father's medical condition during the time the applicant was caring for him.

However, neither the applicant nor his attorney have explained why there is no evidence previously submitted that establishes by a preponderance of evidence that the applicant continuously resided in the United States from January 1, 1982 until September 1987. Further, no additional evidence establishing the applicant's continuous residence was submitted with the applicant's appeal.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981 to 1987 period, and has submitted attestations from only two people, only one of whom knew the applicant during that period. No documents submitted by the applicant establish by a preponderance of the evidence that the applicant continuously resided in the United States at any time.

The absence of sufficiently detailed 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 on his applications 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.