

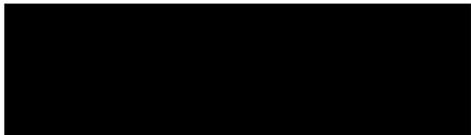


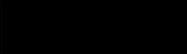
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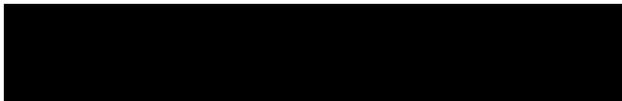
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FILE: 
MSC-05-088-10272

Office: LOS ANGELES

Date: **AUG 30 2007**

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. 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 determined the information submitted by the applicant failed to establish by a preponderance of the evidence that he is eligible for temporary resident status. As a result, she denied the application.

On appeal, the applicant reiterated that he has been living in the United States since 1981. He also provided contact information for individuals who had submitted affidavits, as well as evidence the affiants were in the United States during the requisite period.

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 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).

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 applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, 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 applicant 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 and 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) 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, to Citizenship and Immigration Services (CIS) on December 27, 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] from December 1980 to March 1982; [REDACTED] California from March 1982 to December 1984; [REDACTED] December 1984 to October 1987; and [REDACTED] California from October 1987 to December 1995. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed his employment during the requisite period as follows: working as a mechanic for George in the City of Commerce, California during 1983; and working as a mechanic for [REDACTED] in Los Angeles, California from 1985 to 1988.

With his application, the applicant provided a form affidavit from [REDACTED] dated May 28, 1988. This affidavit confirmed that the applicant and the affiant were friends, worked together and lived in the same place. The affiant stated, "I know [the applicant] has been in the United States from 1985." The affiant also stated, "to [my] personal knowledge the applicant has resided in the United States as follows: Los Angeles, CA from 1985 to present." This affidavit does not provide the applicant's specific addresses during the time period in question, or other relevant details. As a result, it is found to be lacking in detail. In addition, this affidavit merely confirms that the applicant resided in the United States from 1985 to 1988.

The applicant also included a letter from [REDACTED]. In this letter, [REDACTED] explained that he and the applicant were neighbors from March 1982 to December 1984. The applicant lived in apartment #12 and the affiant lived in apartment #7. The return address of the letter was [REDACTED]. [REDACTED] attached marriage documentation indicating he was in the United States during 1982. This letter is found to be inconsistent with the applicant's statements on Form I-687. Specifically, the applicant indicated he lived in apartment #7 at [REDACTED] as opposed to apartment #12. In addition, this letter is not provided in the form of a sworn statement, and this detracts from its credibility.

The applicant also submitted an affidavit from [REDACTED]. In this affidavit the affiant confirmed the following residences for the applicant during the requisite period: South Gate, California from October 1981 to November 1983; Los Angeles, California from November 1983 to October 1987; and Montebello, California from October 1987 to December 1990. The affiant also stated, "I met [the applicant] as a co-worker of mine. We became good friends and we again became co-workers and continue to be co-workers to this day." This affidavit is found to be inconsistent with the applicant's statements on Form I-687. Specifically, the applicant indicated he lived in South Gate from 1980 to 1982 and in Montebello from 1982 to 1984, while the affiant indicated the applicant lived in South Gate from 1981 to 1983 and in Montebello from 1987 to 1990. In addition, the applicant indicated he did not begin working in the United States until 1983, while the affiant stated he met the applicant at work in 1981. Lastly, although not required, the affiant failed to provide documentation of his identity or presence in the United States during the requisite period.

The applicant also included a form affidavit from [REDACTED]. [REDACTED] confirmed the following residences for the applicant during the requisite period: Los Angeles, California from November 1983 to October 1987; and Montebello, California from October 1987 to December 1990. This affidavit is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant indicated he lived in Montebello from 1982 to 1984, while the affiant indicated the applicant lived in Montebello from 1987 to 1990. In addition, although not required, the affiant failed to provide documentation of his identity or presence in the United States during the requisite period.

The applicant also submitted photocopies of receipts to prove he resided in the United States during the requisite period. He included a receipt dated August 19, 1982. This receipt is inconsistent with the information provided on the Form I-687. Specifically, the receipt documents receipt of rent money from the applicant for [REDACTED]. However, the applicant listed this address on Form I-687 as [REDACTED]. The applicant provided copies of two additional receipts that are generally consistent with the information provided on Form I-687. However, the dates on these receipts appear to have been corrected or tampered with in some way.

The applicant also provided an affidavit from himself, and an affidavit from his wife, [REDACTED]. Both these affidavits stated that the applicant came to the United States in 1980. Neither of these affidavits were notarized.

In response to a Form I-72 requesting additional information, the applicant provided affidavits and other documentation. In his letter, [REDACTED] confirmed that he has known the applicant since 1982. The applicant worked on [REDACTED] father's car regularly and subsequently on [REDACTED] car. [REDACTED] also confirmed the applicant is his neighbor. [REDACTED] did not confirm the applicant's residence in the United States for any specific time period, and his letter is unsigned. [REDACTED] provided a letter in which he confirmed he has known the applicant since 1982 and has kept in contact with him throughout the years. [REDACTED] also stated, "Whenever I need a good mechanic, he has always been there to help me." This letter also fails to confirm the applicant's residence in the United States for any specific time period. The applicant also submitted an affidavit from [REDACTED], confirming that the affiant has known the applicant since 1988. This affidavit lacks sufficient specificity to indicate the affiant can confirm the applicant's residence for any portion of the requisite period.

In denying the application, the director noted that the applicant was given 30 days to provide additional information in response to the Form I-72. However, the information the applicant submitted failed to establish by a preponderance of the evidence that the applicant is eligible for temporary residence.

On appeal, the applicant asserted he has been living continually in the United States since 1981; provided contact information for multiple affiants; and provided additional affidavits. In his affidavit, [REDACTED] stated that he has known the applicant since 1982. He stated, "I came to know [the applicant] in Los Angeles, California under the following circumstances: I met [him] in our neighborhood." The affiant also indicated he currently resides at a Commerce, California address. This affidavit appears to be inconsistent with the information provided by the applicant on Form I-687. Specifically, the affiant currently resides in Commerce, California and indicated he met the applicant in his neighborhood in 1981. However, the applicant indicated he did not move to Commerce, California until 1987. The affiant provided real estate documentation dated 1965 to indicate he was in the United States prior to the start of the requisite period.

In her affidavit, [REDACTED] stated that she has known the applicant since 1981. The affiant did not confirm the applicant resided in the United States at any time during the requisite period.

In his declaration, [REDACTED] indicated he has known of the presence of the applicant in the United States since 1981. The declarant met the applicant through the declarant's father. This declarant did not provide any specific information regarding the applicant's dates and places of residence in the United States. This declaration was not notarized. The declarant attached an unofficial transcript indicating that he was present in the United States throughout the requisite period.

The applicant provided an additional copy of the affidavit from [REDACTED] which had been submitted with the Form I-687 application. The applicant also included documentation indicating [REDACTED] was in the United States during the requisite period.

In his affidavit, [REDACTED] stated that he has known the applicant since 1982. He came to know the applicant in Los Angeles because the affiant used to take his vehicles to get fixed at a "mechanic place" where the applicant used to work in 1982. After that, the affiant and the applicant worked together for about ten years. The affiant stated "I have known the applicant since 1982 and . . . to the best of my knowledge, he has been continuously residing in the United States since that time." This affidavit appears to be inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant did not indicate he had worked as a mechanic in the United States until 1983, yet the affiant indicated he met the applicant in 1982 when the applicant was working at a mechanic shop. This apparent inconsistency calls into question whether the applicant resided in the United States throughout the requisite period. Although not required, the affiant did not provide documentation of his identity or presence in the United States during the requisite period.

In his affidavit, [REDACTED] stated that he has known the applicant since 1982 and was his neighbor for many years. This affidavit fails to confirm the applicant resided in the United States for any specific dates during the requisite period.

In his declaration, [REDACTED] confirmed he met the applicant in 1981 in Los Angeles. He indicated that, to the best of his knowledge, the applicant has continuously resided in the United States since that time. This declaration was not notarized. The declarant attached copies of his tax return and Form W-2 for 1981.

The record also contains an earlier submitted Form I-687 application signed by the applicant on July 24, 1993. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed the following residences during the requisite period: [REDACTED] from October 1981 to November 1983; [REDACTED] California from November 1983 to January 1985; [REDACTED] California, January 1985 to March 1986; [REDACTED] from March 1986 to October 1987; and [REDACTED] California from October 1987 to December 1990. At part #36, where applicants were asked to list employment in the United States since first entry, the applicant listed the following positions during the requisite period: self-employed mechanic from 1981 to 1983; mechanic for [REDACTED] California from 1983 to 1985; and [REDACTED] from 1986 to 1988. This application is found to be inconsistent with the second Form I-687 application submitted by the applicant. Specifically, the first application indicates the applicant lived at the South Gate address from 1981 to 1983, while the second application indicates the applicant lived at the South Gate address from 1980 to 1982. The remaining addresses listed on each application are inconsistent with each other. In addition, the first application indicated the applicant worked for [REDACTED] from 1983 to 1985, while the second application indicated the applicant worked for [REDACTED] from 1985 to 1988. The remaining employment positions listed on each application are inconsistent with each other. These inconsistencies call into question whether the applicant actually resided in the United States throughout the requisite period.

The record also indicates the applicant was interviewed by an immigration officer on June 17, 1994 in relation to his first Form I-687 application. The record indicates the applicant told the officer his first entry into the United States occurred in October 1981. This is inconsistent with the applicant's recent affidavit, in which he stated that he entered the United States in 1980. This inconsistency calls into question whether the applicant actually entered the United States prior to January 1, 1982.

In summary, the applicant has provided only contemporaneous evidence of residence in the United States relating to the 1981-88 period that conflicts with his statements or appears to have been altered, and he has submitted affidavits that lack sufficient detail, conflict with the applicant's statements, or do not take the form of a notarized, sworn statement. Specifically, the affidavit from [REDACTED] is insufficiently detailed and confirms the applicant's residence merely from 1985 to 1988. The affidavits from [REDACTED] and [REDACTED] are inconsistent with the applicant's statements, and [REDACTED] affidavit is not provided in the form of a sworn statement. The applicant's and his wife's affidavits are not notarized. The affidavits from [REDACTED] and [REDACTED] and the letters from [REDACTED] and [REDACTED] do not confirm the applicant's residence in the United States for any specific time period. [REDACTED] letter is unsigned. [REDACTED]' and [REDACTED]' declarations were not notarized. The receipts the applicant provided are inconsistent with the applicant's statements or contain dates that appear to have been altered. The applicant's statements in the first Form I-687 conflict with his statements in the second Form I-687 he submitted. The applicant's statements in his first interview with an immigration officer conflict with his statements in his recent written affidavit.

The absence of sufficiently detailed and consistent 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 statements contained in the applicant's I-687 applications, record of his interview with an immigration officer, and supporting affidavits, 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 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.