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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-201-15221

Office: HOUSTON

Date: DEC 05 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, Houston. 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, on April 19, 2005. The director determined that the applicant's counsel provided a response to the Notice of Intent to Deny (NOID) that did not include additional evidence. The NOID stated that the applicant had failed to meet his burden of proof to establish that he first entered the United States before January 1, 1982 and resided continuously in an unlawful status for the requisite periods. Specifically, the director identified an apparent inconsistency between the applicant's written and oral statements that relates to the applicant's absences from the United States during the requisite period.

On appeal, the applicant's counsel asserted that the applicant's absences from the United States do not render him ineligible for temporary resident status. The applicant's counsel also stated that the applicant was very nervous during his interview with an immigration officer.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. 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 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).

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 includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on April 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 only address in the United States during the requisite period to be at [REDACTED] Texas, from April 1981 to August 1989. At part #32, where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed the following absences during the requisite period: family visits to Mexico during March 1983 and 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: laborer for Jimmy from April 1981 to July 1981; roofing worker for [REDACTED] from July 1981 to May 1986; and carpenter for [REDACTED] from May 1986 to July 1989.

The record includes a declaration from [REDACTED] dated July 17, 1990 stating that the applicant has worked for Mr. [REDACTED] from 1981 to the present. This information is inconsistent with the information provided on Form I-687, which indicated the applicant worked for Mr. [REDACTED] from 1986 to 1989 only. This inconsistency calls into question whether Mr. [REDACTED] can confirm the applicant resided in the United States during the requisite period.

The record includes a declaration from [REDACTED] dated July 17, 1990. Ms. [REDACTED] stated that, to the best of her recollection, the applicant has resided in the United States since the latter part of 1981. Ms. [REDACTED] knows the applicant because she resided in the same street as him. Ms. [REDACTED] listed her current address as [REDACTED].

The record includes a form declaration from [REDACTED] dated September 28, 1989. The declaration is printed on letterhead from [REDACTED]. Mr. [REDACTED] stated that the applicant has worked for him from September 5, 1987 to October 29, 1987. This information is found to be inconsistent with the information provided on Form I-687 where the applicant indicated that he was working only for [REDACTED] during 1987. This inconsistency calls into question whether Mr. [REDACTED] can confirm the applicant resided in the United States during the requisite period.

The record includes another declaration from [REDACTED] also printed on [REDACTED] letterhead and dated September 28, 1989. In this declaration, Mr. [REDACTED] stated that the applicant worked for him picking squash, green beans, and cherry tomatoes; and packing, from September 5, 1987 to October 29, 1987. Mr. [REDACTED] also stated that the applicant resided at [REDACTED] Florida City, Florida at the time of employment. This information is inconsistent with the information provided on Form I-687, which indicates the applicant was working only for [REDACTED] and living only in Texas during 1987. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

The record also includes a declaration from [REDACTED] dated March 20, 1990. In this declaration, Mr. [REDACTED] stated that he has known the applicant since October 1986 when the applicant did some repairs, carpentry and painting to Mr. [REDACTED] house. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The record includes a declaration from [REDACTED] dated January 28, 2002. Ms. [REDACTED] stated that she has known the applicant since January 1981 when he was a roommate in her house. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The record includes a declaration from [REDACTED] dated January 28, 2002. Mr. [REDACTED] stated that he has known the applicant since January 1981 when he was a roommate in Mr. [REDACTED] house. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] dated January 29, 2002. Mr. [REDACTED] listed his address as [REDACTED], Texas. Mr. [REDACTED] stated that he met the applicant in January 1981 when the applicant moved across the street from Mr. [REDACTED]'s home. This declaration fails to confirm the applicant resided in the United States during the requisite period. It is also noted that Form I-687 lists the applicant's address starting in March 2000 as [REDACTED], an address that appears to be across the street from Mr. [REDACTED] address. This suggests that the applicant may not

actually have become Mr. ██████ neighbor until March 2000, which calls into question his ability to confirm the applicant resided in the United States during the requisite period.

The record also includes an affidavit from ██████ dated January 28, 2002. The affiant stated that she has known the applicant since January 1981. The affiant failed to confirm the applicant resided in the United States during the requisite period.

The record includes a photocopy of a receipt from ██████ in Houston, Texas containing a date that appears to have been altered. This receipt does not include the applicant's address. Therefore, the receipt does not serve as evidence that the applicant resided in the United States during the requisite period.

The record also includes six envelopes addressed to the applicant at various addresses. Several of the envelopes are addressed to the applicant at addresses other than ██████, where he indicated on Form I-687 that he lived throughout the requisite period. Specifically, one envelope was addressed to the applicant at ██████, Texas; and two envelopes were addressed to the applicant at ██████, Houston, Texas. The inconsistencies between the information on the envelopes and the information on Form I-687 calls into question whether the applicant resided in the United States during the requisite period. Three envelopes are addressed to the applicant at ██████. Of these, two envelopes contain a postal cancellation date stamp that is illegible and the other contains a date stamp that appears to have been altered to read "Feb. 82."

The record also contains a receipt from Aracely Express Corporation in Houston, Texas. The date on this receipt appears to have been altered to read December 8, 1982. This receipt does not include the applicant's address. Therefore, the receipt does not serve as evidence that the applicant resided in the United States during the requisite period. The declarant failed to state their shared address.

The record also includes Form I-485 Application to Register Permanent Residence or Adjust Status submitted by the applicant on March 5, 2002. At part 3B, where applicants were asked to list all sons and daughters, the applicant indicated two of his children were born in Mexico during the requisite period, on May 19, 1982 and January 12, 1986. The record is silent as to whether the applicant's wife was with the applicant in the United States when their sons were conceived.

The record includes a Form I-687 application signed by the applicant on July 5, 1990. At part #32 where applicants were asked to list each son and daughter, the applicant indicated only one child was born during the requisite period: ██████ born in Mexico on January 12, 1985. The applicant indicated his son ██████ was born on May 19, 1981 in Mexico. This information is inconsistent with the information provided on Form I-485, which indicated the applicant had two children who were born in Mexico during the requisite period. This inconsistency calls into question whether the applicant actually resided in the United States throughout the requisite period.

In denying the application, the director stated that the applicant's counsel provided a response to the Notice of Intent to Deny (NOID) that did not include additional evidence. The NOID stated that the applicant had failed to meet his burden of proof to establish that he first entered the United States before January 1, 1982 and resided continuously in an unlawful status for the requisite periods. Specifically, the director identified an apparent inconsistency between the applicant's written and oral statements. The director indicated the applicant stated on the current Form I-687 that his only absences from the United States during the requisite period were in March 1983 and September 1987, while he indicated on his Form I-687 signed in 1990 that one of his children was born in Mexico on January 12, 1985. As already discussed, without additional information regarding the presence of the applicant's wife in the United States, the applicant's statements regarding his absences from the United States and his children's dates of birth do not appear to be inconsistent with each other. However, as mentioned above, the applicant's multiple statements regarding his children's dates of birth are inconsistent with each other, and this inconsistency casts doubt on the applicant's claim to have resided in the United States throughout the requisite period.

On appeal, the applicant's counsel asserted that the applicant's absences from the United States do not render him ineligible for temporary resident status. The applicant's counsel also stated that the applicant was very nervous during his interview with an immigration officer.

In summary, the applicant has provided only limited contemporaneous evidence of residence in the United States relating to the 1981-88 period. Specifically, the applicant provided a photocopy of a receipt from [REDACTED] that does not include the applicant's address and, therefore, does not serve as evidence that the applicant resided in the United States during the requisite period. The applicant also provided six envelopes. Only three of these envelopes list an address that is consistent with the applicant's address during the requisite period as listed on his current Form I-687. Two of the three contain an illegible postal cancellation stamp and one contains a date stamp that appears to have been altered. The applicant provided a receipt from Aracely Express Corporation that does not include the applicant's address and, therefore, does not serve as evidence that the applicant resided in the United States during the requisite period. In addition, the applicant submitted affidavits and declarations that conflict with the applicant's statements or fail to confirm the applicant resided in the United States during the requisite period. Specifically, the declarations from Mr. [REDACTED] and Mr. [REDACTED] are inconsistent with the information provided on Form I-687. The declarations from Mr. [REDACTED], Ms. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] fail to confirm the applicant resided in the United States during the requisite period. Lastly, the information provided on the Form I-687 signed in 1990 and on Form I-485 regarding the dates of birth of the applicant's children is inconsistent. Considering the inconsistencies elsewhere in the record, the declaration from Ms. [REDACTED] is insufficient to meet the applicant's burden of establishing by a preponderance of the evidence that he resided in the United States continuously during the requisite period, without documentation of Ms. [REDACTED] identity and presence in the United States or other relevant corroborative evidence.

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 application and supporting documents, 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.