

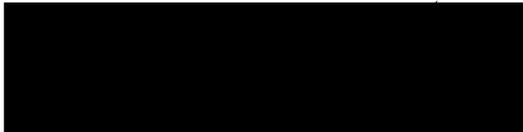
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC 05 230 14253

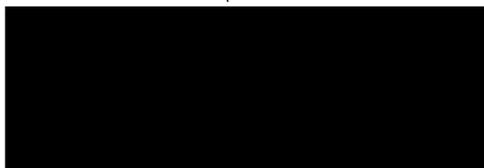
Office: LOS ANGELES

Date: DEC 12 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.

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 District Director, Los Angeles, and 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. More specifically, the director focused on discrepancies between various statements made by the applicant with regard to his departures from and entrances into the United States and denied the application based on the applicant's lack of credibility. Therefore, based on the finding that the applicant had not met his burden of proof, the director found him ineligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. While this decision will be supplemented with a thorough analysis of the documentation submitted in support of the claim, which the director's decision is lacking, the AAO finds that the ultimate conclusion with regard to the applicant's eligibility was warranted.

On appeal, counsel for the applicant asserts that the director erred by not issuing a notice of his intent to deny the application and claims that the applicant has met his burden of proof with regard to establishing his continuous residence in the United States since prior to January 1, 1982. Counsel also attempts to account for the discrepancy cited by the director by providing his own explanation as well as a sworn statement from the applicant.

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). 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).

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, 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.

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.* 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 Service in the original legalization application period of May 5, 1987 to May 4, 1988. In the present matter, the applicant's first Form I-687 application is dated May 31, 1990. In support of the application, the applicant provided the following documentation:

1. An employment letter from [REDACTED] of Rapid Graphics, claiming that he employed the applicant from 1981 to "the present," a date that cannot be established due to Mr. [REDACTED] failure to date the letter. Mr. [REDACTED] claimed that he paid the applicant in cash.
2. Four affidavits dated May 31, 1990 from [REDACTED] Ms. [REDACTED] claimed to reside at [REDACTED] and stated that the applicant had been residing with her at that address from December 1980 through the date of the affidavit. The three remaining affiants claimed to have known the applicant since January 1981, February 1981, and February 1980, respectively. All four affiants attested to the applicant's good moral character.
3. Copies of the applicant's personal tax returns from 1982-1986 accompanied by copies of the money order slips made out to the Internal Revenue Service (IRS) in the amount of tax

liability owed by the applicant during each respective year. It is noted that only the 1982 and 1983 tax returns contain a signature and none of the tax returns were dated by the applicant or date stamped to show that they were actually filed with the IRS.

The AAO notes that the above documentation is deficient and does not establish that the applicant has been residing in the United States during the statutory time period. More specifically, only one of the affiants discussed in No. 2 above provided any verifiable information regarding the applicant's residence. The three remaining affiants provided only the date each affiant purportedly met the applicant. Furthermore, Mr. [REDACTED] claim that he met the applicant in February 1980 is inconsistent with the applicant's claim that he first came to the United States in December 1980.

With respect to the applicant's employment letter, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, the individual attesting to the applicant's employment during the qualifying time period failed to date the employment letter, provide the applicant's address during the time of the claimed employment and the exact period of employment, and he made no mention of the source of the information provided and whether employment records contained such information. In fact, while the affiant indicated that the applicant worked for him, he did not indicate his position within Rapid Graphics.

Lastly, as indicated above, the record lacks evidence to establish that the applicant actually filed the tax returns whose copies have been provided.

On May 18, 2005, the applicant submitted another Form I-687 providing additional information. In support of the more recent application, the applicant provided five additional affidavits, two of which came from affiants who also submitted statements on the applicant's behalf in support of the initially filed Form I-687. [REDACTED] whose affidavit is dated March 7, 2005, stated that she met the applicant in Pasadena and claimed that her husband introduced her to the applicant. The affiant did not, however state when she first met the applicant or provide any other verifiable information regarding the applicant's U.S. residence.

[REDACTED], who first attested on behalf of the applicant in 1990, stated that he first met the applicant in 1982. This statement, dated March 5, 2005, is inconsistent with the affiant's prior attestation where he claimed to have first met the applicant in February 1980. The third affiant, [REDACTED] whose affidavit was dated March 7, 2005, claimed that she first met the applicant in 1975 at a family gathering in Panorama. However, Ms. [REDACTED] attestation is inconsistent with the applicant's own claim regarding his initial U.S. entry, which he claims was in 1980, not 1975. While [REDACTED] whose most recent affidavit is dated March 5, 2005, previously attested to the applicant's employment from 1981 to 1990, he made no mention of this verifiable information in his most recent statement. Rather, the affiant claimed that he himself worked for Rapid Graphics and stated that he became acquainted with the applicant when he began dating the applicant's sister, who is now the affiant's wife.

While the affiant attested to the applicant's U.S. residence since prior to 1982, he did not provide the date when he first met the applicant. As such, the AAO is unclear as to the basis of the affiant's knowledge.

The last affiant, [REDACTED] whose affidavit was dated March 6, 2005, claimed that he first met the applicant in 1985 at a family gathering. The affiant also made reference to his own address during the time period of the applicant's initial entry into the United States. In light of the date the affiant claimed to have first met the applicant, i.e., 1985, it appears that this affiant's claim is inconsistent with that of the applicant's, as the applicant claimed to have entered the United States prior to 1982.

As discussed above, the affidavits submitted in support of both applications are deficient in their own right, either due to inconsistencies or lack of verifiable information or both. Therefore, the affidavits lack sufficient probative value to adequately support the applicant's claim.

On appeal, counsel focuses primarily on the fact that the director did not issue a notice of intent to deny (NOID), which counsel asserts is required by the terms of the CSS/Newman Settlement Agreements. Counsel's argument, however, is without merit. Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

Thus, based on the above language, the NOID is only required when a denial is based on an applicant's failure to establish eligibility for class membership status. In the present matter, the director does not dispute the applicant's eligibility for class membership. Rather, he bases his adverse conclusion on the applicant's failure to provide sufficient, credible evidence to establish his continuous unlawful residence during the requisite time period. While it is implied that individuals applying for class membership status are also claiming to have resided unlawfully in the United States for the requisite statutory period, an applicant may be granted class membership status and still be ineligible for temporary resident status. More specifically, class membership hinges primarily on whether an applicant claiming unlawful status during the statutory period was improperly denied an opportunity to file a Form I-687 during the original filing period.

With regard to the director's adverse findings concerning the applicant's credibility, counsel reaffirms the list of absences provided by the applicant in both of the Form I-687s and in the declaration submitted on appeal. Counsel also explains that the applicant did not disclose his two-week absence from December 2005 to January 2006 because it took place outside the statutory period and was therefore irrelevant to the issue of the applicant's eligibility. Further, in an attempt to clarify any discrepancies, counsel explains that the applicant does not recall discussing a 1987 absence at his interview. Counsel also claims that the applicant was entirely unaware of the contents of his asylum application, as it was purportedly completed by a third party on behalf of the applicant, not by the applicant himself. However, the only signature on

the asylum application was that of the applicant. The application was not signed by a preparer. Moreover, the applicant signed the application under penalty of perjury. The fact that the applicant now recants statements he made under the penalty of perjury gives rise to doubt as to the applicant's credibility and the validity of his present claim. 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). In the present matter, the applicant does not provide any evidence reconciling the inconsistent information. Moreover, the record contains documentation showing that the applicant was deported as a result of his unlawful entry into the United States on or about December 1, 1988. This documentation directly undermines the applicant's testimony claiming that his last absence from the United States, aside from the 2005/2006 absence, was from August to September 1987. As such, the applicant's credibility is severely compromised.

That being said, the list of residences as provided by the applicant in each of the two Form I-687s he completed are inconsistent. Specifically, in the original Form I-687, No. 33, the applicant stated that he resided at [REDACTED] from December 1980 through May 31, 1990, the date on the application. In the more recent Form I-687, No. 30, the applicant stated that he only resided at that address from 1980 to 1981. The applicant stated that he resided at [REDACTED] from 1981 to 1989. This updated information also conflicts with the attestation of Ms. [REDACTED] an affiant whose statements were submitted in support of the initial Form I-687. Ms. [REDACTED] reiterated information provided in the first Form I-687 where the applicant stated that he resided at [REDACTED] from December 1980 through the date of filing.

In summary, the applicant has provided deficient documentation to support a claim that has been significantly weakened by inconsistencies, which have not been reconciled. 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 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*, 20 I&N Dec. 77. 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.