



U.S. Citizenship  
and Immigration  
Services

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41

[REDACTED]

FILE: [REDACTED]  
MSC-05-167-27056

OFFICE: LOS ANGELES

Date: DEC 17 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:

[REDACTED]

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. 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 to Citizenship and Immigration Services (CIS), or the Service. 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 stated that the applicant submitted two (2) employment verification letters from the same employer, [REDACTED], a farm labor contractor, that were not consistent regarding the applicant's dates of employment. She further noted that on his Form I-687 the applicant listed his first address of residence in the United States to be in Mendota, California, where he indicated that he began residing in May of 1985. However, the applicant stated under oath that he first entered the United States in August of 1981 at the time of his interview with a CIS officer. The director found that the inconsistent evidence regarding the applicant's employment and the addresses of residence in the United States during the requisite period cast doubt on whether the applicant had accurately represented his employment and addresses of residence to the Service. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant resubmits one (1) of his two (2) previously submitted employment verification letters from [REDACTED]. He states that he submitted a previous letter from his former employer because he received the wrong advice from his attorney. He asserts that though he was twelve (12) years old at the time his employment letter indicates he began working for him, this is usual in Mexico, where he states that many children who are seven (7) years old work. He goes on to say that he resided continuously in the United States during the requisite period and to clarify the dates he was absent from the United States. He asserts that his testimony has remained consistent but that any inconsistencies found by the Service can be explained because of the passage of time.

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)(1) 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.* 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 for the duration of the requisite period. 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 CIS on March 16, 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 first address in the United States during the requisite period to be: [REDACTED] in Mendota, California where he indicated he resided from April 1985 until June 1986. He also showed that he lived at [REDACTED] in Santa Ana, California from July 1986 until March 1994. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be for Joe Ruiz, a farm labor contractor, in Firebaugh, California from May 1985 until May 1986 and then as a self-employed landscaper who performed gardening services from June 1986 until October 1993 in Santa Ana, California.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documents that are relevant to the requisite period:

- A letter from [REDACTED] that is dated November 30, 2004 in which Mr. [REDACTED] asserts that the applicant was employed by him performing agricultural work from May 1, 1985 until May 1, 1986. He states that payroll records have been destroyed but that he is able to verify the applicant's dates of employment because he recognizes the applicant and has yearly contact with him. This letter was submitted on letterhead and was submitted with an affidavit. It is noted that this affidavit contains spaces for all periods of work. Here, the only dates of employment shown for the applicant are from May of 1985 until May of 1986.
- A letter from [REDACTED]z dated February 8, 2006 in which Mr. [REDACTED] states that the applicant was employed by him from September of 1981 until April of 1985 performing agricultural work. He states that he is unable to provide payroll records as those documents have been destroyed but that he is able to verify the applicant's dates of employment because recognizes the applicant and has yearly contact with him. This letter was submitted on letterhead and was submitted with an affidavit. It is noted that this affidavit contains spaces for all periods of work. Here, the only dates of employment shown for the applicant are from September 1981 until April 1985. It is further noted that on the applicant's Form I-687 he indicated that he did not begin working for this employer until May 1985. It is further noted that the applicant was thirteen (13) years old in September 1981, as his date of birth is November 28, 1967.

These letters do not contain consistent information regarding the dates of the applicant's employment. Further, the applicant showed on his Form I-687 that he did not begin working for Mr. [REDACTED] until May of 1985. Therefore, doubt is cast on whether Mr. [REDACTED] has accurately represented the dates of employment for this applicant on either document.

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. 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).

The tax documents submitted by the applicant confirm that he has worked in the United States on dates that occur after May 4, 1988. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since April 1985 and was employed in the United States since May 1985. The

evidence submitted by the application in support of his application showed he was employed by [REDACTED] from May 1985 to May 1986. However, a subsequent letter from that same employer showed that the applicant began working for [REDACTED] in September 1981.

In denying the application, the director noted these discrepancies and stated that because of them, the applicant did not meet his burden of establishing by a preponderance of the evidence that he resided in the United States for the duration of the requisite period.

On appeal, the applicant attempts to explain these contradictions. He resubmits one of his two previously submitted employment verification letters. This letter, dated February 8, 2006, is from [REDACTED] and states that the applicant worked for him from September 1981 until April 1985.

The applicant also submits a statement in which he asserts that he began working for [REDACTED] in November of 1981. It is noted that the employment verification letter the applicant submitted with his appeal indicates that this employment began in September of 1981. He states that he submitted the letter from [REDACTED] that states that his work for Mr. [REDACTED] began in May of 1985 because he received the wrong advice from his attorney. It is noted here that advice from an applicant's attorney should not result in the alteration of dates of employment represented on an employment verification letter, as such letters should include inclusive dates of employment taken from employee records or other sources that are verifiable. It is further noted that the affidavits submitted with both employment verification letters in the record state that completion of those affidavits was taken under oath. It is further noted that there are penalties for making false statements on such affidavits. The applicant asserts that though he was twelve (12) years old at the time his employment letter indicates he began working for him, this is usual in Mexico, where he states that many children who are seven (7) years old work. He goes on to say that he resided continuously in the United States during the requisite period and to clarify the dates he was absent from the United States and to assert that his testimony has remained consistent but that any inconsistencies can be explained because of the passage of time.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted two (2) attestations from one employer concerning that period that are not consistent regarding his dates of employment. The applicant's statement submitted with his appeal is not consistent with what he showed on his Form I-687 regarding the dates of his addresses of residence or dates of employment in the United States during the requisite period.

The absence of sufficiently detailed 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 applicant's contradictory statements in documents in the record and his reliance upon documents that are not consistent, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.

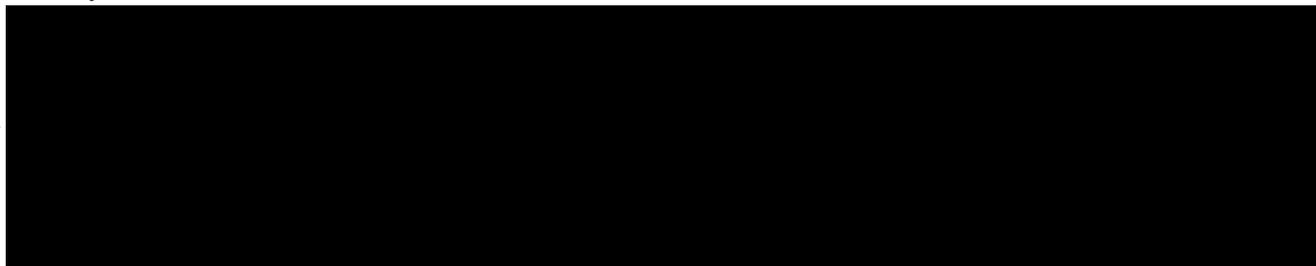
**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.

**Johnson, Mari F**

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**From:** Bruvere, Silvia  
**Sent:** Monday, December 10, 2007 11:25 AM  
**To:** Johnson, Mari F  
**Subject:** FW: CIS File Request: A-79-738-957, ANGULO, Gloria & A-79-738-955, BORJA, Marvin Master Hearing on January 9, 2007?  
**Importance:** High  
**Attachments:** RE: CIS File Request: A-79-738-957, ANGULO, Gloaria & A-79-738-955, BORJA, Marvin

Molly, FYI. Both files are with Cleo.



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Hi,

The court date has been finally set for January 9, 2008 

