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

LA

FILE:

MSC-04-283-10449

Office: CHICAGO

Date:

DEC 27 2007

IN RE:

Applicant:

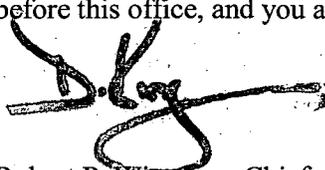
APPLICATION:

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:

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

The director determined the applicant had not demonstrated 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 or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period. Specifically, the director noted that the evidence submitted by the applicant, including: two (2) the affidavits, two (2) employment letters and photocopies of mailed envelopes were insufficient to establish, by a preponderance of the evidence, that the applicant maintained continuous residence during the requisite period. The director went on to say that the Service was unable to reach the two (2) affiants at the telephone numbers provided in their affidavits. The director went on to say, that, though the Service could confirm the existence of one of the companies for which the applicant submitted an employment letter, [REDACTED], the other company for which the applicant claimed to have worked until 1991, [REDACTED] Restaurant, never existed. The director further stated that the photocopies of the envelopes presented by the applicant were sent by [REDACTED] rather than [REDACTED] and were therefore not credible. The director stated that there was not anything in the file to indicate that the applicant and [REDACTED] were one and the same person. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he entered the United States before January 1, 1982 and maintained continuous residence throughout the requisite period. He attempts to account for the contradictions in his previously furnished evidence, stating that while the Service referred to affiants who submitted two affidavits as "uncooperative," they were both simply at work at the time the Service called, which he noted was the middle of the afternoon. The applicant refutes the director's statement that the Service called the affiants four (4) times, saying that according affiant Mr. [REDACTED] wife, the Service only called one time in the middle of the afternoon and was told the affiant was at work. The applicant submits updated affidavits from these individuals. The applicant also refers to the director's questioning of the existence of Anastasio's Restaurant, the owner of which submitted an employment letter for the applicant in 1990. The applicant states that though this restaurant may not currently exist, it did at the time the applicant worked for them during the requisite period. The applicant further notes that the director confirmed the existence of the applicant's other employer that furnished an employment letter for him. Lastly, the applicant states that the applicant is referred to as [REDACTED] by his family, who often shortens their last name from [REDACTED]

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).

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.* at 80. 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. Here, the submitted evidence is 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 July 9, 2004. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, he showed his addresses all to be in Chicago at the following locations during the requisite period: [REDACTED] from 1981-1982; [REDACTED] 1982 to 1986; [REDACTED] from 1986 to 1987; and [REDACTED] from 1987 to 2002. At part #32 where the applicant was asked to list all of his absences from the United States since January 1, 1982 he indicated he was absent twice during the requisite period: his first absence occurred he went to Mexico from May 27, 1986 to June 11, 1986 to get married; his second absence occurred when he went to Mexico for a vacation from September 25, 1987 to October 15, 1987. At part #33 of his Form I-687, the applicant showed employment in the United States during the requisite period as follows: a busboy at the [REDACTED] in Chicago Illinois from January 1981 to October 1984 and then again from June 1986 to March 1986 [sic]; a busboy at [REDACTED]'s Restaurant in Chicago, Illinois from November 1984 to February 1986 and then from April 1986 to 1991.

The record contains a second Form I-687 that is not signed by the applicant but which contains a date stamp indicating it was received by the Service on September 5, 2000. This Form I-687 bears a receipt number SRC-01-110-55803 that was issued on February 26, 2001. The applicant listed all addresses and absences consistently with those he provided in his Form I-687 that was filed pursuant to the CSS/Newman Settlement Agreements. The applicant listed the names of his employers consistently with those he provided in his 2004 Form I-687. However, this form appears to contain a typo in the dates given for his first employment with the [REDACTED] indicating that he worked there from January 1981 to October "94" instead of 1984. This appears to be a typo because the applicant indicated that he worked for [REDACTED]'s subsequently to this on the same application. The applicant also lists his ending date with the [REDACTED] as March 1986 and does not indicate employment from March 1986 until the end of the requisite period on this form. On this Form I-687, the applicant indicates the last time he re-entered the United States was on October 15, 1987. In section #32 of this Form I-687 and section 3(B) of his Form I-485, the applicant indicates he has a son who was born on December 24, 1988. He indicates this son was born in Guerrero, Mexico and that his wife was in Guerrero Mexico in 1990 at the time he filed his 2000 Form I-687. However, there is nothing in the record that states that this child is the applicant's biological child or that his wife was not in the United States in early 1988. Therefore, it cannot be concluded that the applicant would have needed to be in Mexico for the child's conception.

The record contains a third Form I-687 signed by the applicant on February 7, 1991 that was submitted to establish class membership. Part #33 of this application asks the applicant to list all of his addresses. Here, he shows addresses that are consistent with what he showed on his Form I-687 that was submitted in 2004 pursuant to the CSS/Newman Settlement Agreements for the dates 1981 to 1986. However, the applicant then shows he lived at [REDACTED] from 1986 to 1987. The applicant then indicated he lived at [REDACTED] from 1988 to the time he signed this Form I-687. On the Form I-687 submitted pursuant to the CSS/Newman Settlement

Agreements in 2004, he indicated he lived [REDACTED] from 1986 to 1987 and then at [REDACTED] from 1987 to 2002. The dates of the applicant's absences are consistent with those listed on his other Form I-687's. The dates and places of employment are consistent with those previously listed. It is noted that this Form I-687 was prepared by [REDACTED] and not the applicant.

The record also contains a change of address form received on February 7, 1992 that indicates the applicant's address was [REDACTED], Illinois as of that date. This form requests that the applicant's address of record be changed from [REDACTED]. This indicates that both addresses have been valid for this applicant.

The record contains a Form G-325A that indicates the applicant was married on May 30, 1986 in Mexico. This date is consistent with the date the applicant states he was in Mexico for his wedding.

The record reflects that on April 25, 1991, that applicant was arrested by the Chicago Police Department and subsequently charged with battery. However, the record also shows that on May 15, 1991 this offence was stricken from the record.

Also in the record is a letter on official Chicago Department of Police letterhead, stating that the Chicago Police Department conducted a search on the applicant's name and this search indicated that there were no convictions or sentences for any criminal offense for [REDACTED] date of birth May 28, 1964. It is noted that the applicant's name appears on the record represented in the previous paragraph as [REDACTED]. The Police Department indicated that they obtained this information after doing a name search.

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, until the end of the requisite period, the applicant provided voluminous documentation, in the form of one (1) Illinois State Driver's License issued to the applicant in 1984, nine (9) affidavits and letters from individuals, two (2) employment verification letters that, when considered together, span the entirety of the requisite period, eight (8) receipts for car payments made during the

requisite period, eight (8) original or copies of photographs, thirty-six (36) original envelopes indicating they were sent by the applicant and/or letters written by the applicant to family members in Mexico, some of which have been translated and notarized. The applicant also submitted bank records, utility bills, additional envelopes and identity documents that do not relate to the requisite period. While these are noted, as they are not relevant to this proceeding they are not detailed here.

A summary of some of the documents the applicant submitted in support of his application the following documents, by type is as follows:

Affidavits, notarized letters and other letters:

- The applicant submitted notarized and non-notarized letters from eight (8) affiants as follows: the [REDACTED] [REDACTED] and [REDACTED]. These letters were submitted with the applicant both when he submitted his Form I-687 to establish class membership in 1991 and when he submitted his Form I-687 in 2004 pursuant to the CSS/Newman Settlement Agreements. The affiants list the applicant's address consistently with what the applicant showed on his Forms I-687. It is noted that many of the affiants refer to the applicant as "[REDACTED]". Though the affiants indicate they have known the applicant from varying points in time, when considered together, affiants state that they personally know that the applicant has resided in the United States from 1981 through the end of the requisite period.

Employment letters:

- An employment letter dated December 17, 1990 from [REDACTED] Restaurant. This letter states that the applicant lived at [REDACTED] Park in Chicago Illinois at the time the letter was written. The letter further states that the applicant worked for this restaurant from November 1984 until February 1986. The applicant began working for this restaurant for a second time in April 1986 and was working there at the time the letter was written. The letter states that during his time working with the restaurant, the applicant went on vacation from September 21, 1987 to October 19, 1987, dates that correspond with those provided by the applicant for one of his returns to Mexico. Though the director found that this company did not exist, it is noted that the record shows that to make this determination, the director conducted a search using cyberdriveillinois.com, a site maintained by the Illinois Department of Business Services that contains official government records. The record further shows that the director found "[REDACTED]'s Restaurant" did not exist when this search was conducted. When the AAO conducted the same search spelling the name of the restaurant "[REDACTED] Restaurant" without the apostrophe before the "s," the AAO verified the existence of this restaurant. The AAO found the restaurant was involuntarily dissolved on October 1, 1991 but that it existed on the dates the applicant indicated he worked for that restaurant. Therefore, the AAO finds that the director erred in stating that this company never existed.

- An employment letter dated January 8, 1991 from [REDACTED] stating that the applicant, whose name is referred to as "[REDACTED]" but who has also used the name "[REDACTED]" worked with the company from January 1981 to March 1986, with a break in work at some point in 1984 until March 1986. This letter is on letterhead, refers to the applicant's address at [REDACTED] which corresponds to the address that the applicant provided on his Forms I-687. The dates of employment given by the company correspond with those provided by the applicant. The letter indicates that the information was taken from official company records which are located at [REDACTED] in Chicago. It is indicated that CIS may have access to these records. It is noted that this letter was verified by the director. The record indicates that the existence of this restaurant was verified using cyberdriveillinois.com and then doing a corporation file detail report.

Photographs:

- The applicant submitted eight (8) photographs with his application. Dates of 1981, 1982, 1983, 1984 and 1988 are indicated on these photographs. There is no way to determine from the photographs, however, the dates on which they were taken or whether they were taken in the United States. They cannot therefore be accorded any weight as evidence in support of the applicant's past residence in the United States during the requisite period.

Receipts:

- The applicant submitted eight (8) receipts for payment of a 1975 Ford Mustang during the requisite period. The receipt numbers associated with these receipts are: [REDACTED] and [REDACTED]. These receipts are dated from September 10, 1984 to April 20, 1985. The receipts indicate that payments were made by the applicant, who is referred to as [REDACTED] and [REDACTED] on various receipts who lives at an address that is consistent with what the applicant has indicated was his address of residence at the time these receipts were issued.

Original Envelopes, photocopies of envelopes with or without notarized translations of letters:

- While the director noted that the applicant submitted photocopies of envelopes, the AAO found he had submitted thirty-six (36) original envelopes and letters, some of which contained notarized translations, with his application. These envelopes were postmarked between July 6, 1982 December 27, 1987. The addresses from which the letters were mailed were consistent with addresses at which the applicant indicated he lived during the requisite period on his Form I-687. Stamps on these letters were all issued before the dates the letters were postmarked. The sender of the letters, the applicant, shows his name as [REDACTED] on the envelopes.

The letters are sent to [REDACTED], the applicant's father, [REDACTED] who the letter with the envelope indicates is the applicant's sister, [REDACTED], who is the applicant's wife, and [REDACTED] who is the applicant's mother. With some of these envelopes are letters to the applicant's wife and to his parents, discussing family matters, the applicant's work and asking about how the applicant's relatives in Mexico are doing.

Identity documents:

- A photocopy of an Illinois State Drivers License Number [REDACTED] issued November 21, 1984 picturing an individual who appears to be the applicant and whose height matches the applicant's height, which is noteworthy because the applicant is four (4) feet, eleven (11) inches tall and stating that the owner of the license, [REDACTED]
- A photocopy of an Illinois state driver's license indicating the applicant's address as [REDACTED]. The issue date for this is June 16, 1992. It is noted because this is the address from which many of the letters were mailed during the requisite period. This address is also associated with an undated Illinois resident identification card.

On April 21, 2006, the director issued a Notice of Decision Deny the applicant's application for status as a Temporary Resident. The decision notice indicates that the applicant failed to submit adequate, credible evidence of continuous, unlawful residence in the United States during the requisite period. The director specified in his decision that two (2) of the affiants from which the applicant submitted affidavits were contacted and were uncooperative. Though the director confirmed the existence of [REDACTED], one of the applicant's employers, the director stated that "Anastasio's Restaurant appears to be a non-existing company." Lastly, the director stated that there was no documentation in the file to support the claim that the applicant, [REDACTED] and [REDACTED] are one and the same person. The director concluded that such inconsistencies called all of the applicant's documentation and his underlying claim into question. Thus, the director denied the application.

On appeal, the applicant submits a brief and three additional affidavits.

- In the brief submitted by the applicant, he asserts that he did enter the United States before January 1, 1982 and maintained continuous residence throughout the requisite period. He attempts to account for the contradictions in his previously furnished evidence, stating that while the service referred to affiants who submitted two affidavits as "uncooperative," they were both simply not at home at the time the service called. The applicant refuted the director's statement that the Service called the affiants four (4) times, saying that according to the affiant [REDACTED]'s wife, the Service only called once when the affiant was at work. The applicant submits updated affidavits from these individuals. The applicant also refers to the director's questioning of the existence

of [REDACTED] Restaurant, the owner of which submitted an employment letter for the applicant in 1990. The applicant states that though this restaurant may not currently exist, it did at the time the applicant worked for them during the requisite period. The applicant further notes that the director confirmed the existence of the applicant's other employer that furnished an employment letter for him. Lastly, the applicant states that the applicant is referred to as "[REDACTED]" by his family, who often shortens their last name from "[REDACTED]"

- The first updated affidavit is from [REDACTED] who states that he has known the applicant for twenty-five (25) years. The affiant states that he came to know the applicant because they are family friends. He states that he resides in Chicago and provides the applicant's address and his own phone number, indicating his willingness to come forward if more information is needed. This affidavit is signed May 22, 2006.
- The applicant also submits an updated affidavit from [REDACTED], who reiterates that he has known the applicant since 1982 and that the applicant has continuously resided in the United States since 1982. The affiant provides a telephone number at which he can be reached and indicates that he is willing to come forward if more information is needed. This affidavit is signed May 17, 2006.
- The applicant submits a third affidavit from [REDACTED] who indicates that she is a United States Citizen. The affiant indicates her address and states that she has known the applicant since 1981 and that he has resided continuously in the United States since that time. The affidavit is signed May 23, 2006.

On his application, the applicant showed that he resided and worked in the United States since before January 1, 1982. A preponderance of the evidence supports this claim. Evidence submitted with the application that is relevant to the 1981-88 period in question shows the applicant worked from January 1981 until the end of the requisite period for the [REDACTED] Restaurant and [REDACTED] Restaurant as a busboy. The letter from the [REDACTED] is on company letterhead, provides the applicant's address, indicates that information regarding the applicant's employment was taken from official company records and states both where the records are located and that the government can have access to these records if needed. Though the director found that one of the applicant's places of employment, [REDACTED] Restaurant, never existed, when the AAO searched for this restaurant on a site containing official government records for the State of Illinois, the AAO found this restaurant did exist at the time the applicant claims to have worked there.

Additionally, though not noted by the director, the applicant has submitted a photocopy of his Illinois driver's license issued in 1984, car payment receipts for the years 1984 and 1985 and thirty-six (36) original envelopes and letters from 1982 through the end of the requisite period, some of which also contain notarized translations. As was noted by the director, many of the letters were sent from [REDACTED]" or "[REDACTED]" However, contrary to the director's decision, this shortened version of the applicant's last name appears on many of the

affidavits submitted by the applicant and also appears on the applicant's driver's license. It should be noted that the applicant's driver's license, issued to an individual with the name [REDACTED] shows a photograph that appears to be the applicant and indicates that person who the license was issued to has a height that is consistent with the applicant's height of four (4) feet, eleven (11) inches and also has the applicant's date of birth.

The addresses from which the envelopes in the record are mailed are consistent with those provided by the applicant as his addresses at the time the letters were mailed. The recipients of the thirty six (36) letters sent by [REDACTED]" and "[REDACTED]" are the applicant's wife and father, whose name also appears shortened to [REDACTED]" That the record shows the applicant has previously used the name "[REDACTED]" that the sender's addresses on these thirty-six (36) envelopes is consistent with the applicant's addresses at the time the letters were mailed, and that the letters were mailed to the applicant's wife and father indicate that these letters were, more likely than not, sent by the applicant. It is noted that the issue date of each stamp appearing on the original envelopes was checked using Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue*. Each stamp was found to have been issued on a date before the postmark date of the envelope.

The contemporaneous documents submitted by the applicant appear to be credible. The letters, declarations and affidavits submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses.

The director has not established: that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date through the date that he was dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

ORDER: The applicant's appeal will be sustained. The director shall continue the adjudication of the application for Temporary Resident Status.