

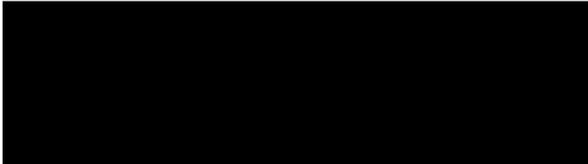
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-249-13250

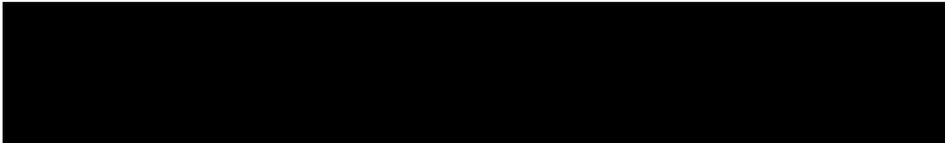
Office: Los Angeles

Date: MAY 23 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The applicant has overcome the director's decision in part. The matter will be remanded for further action on the issue of the denial of class membership.

The director determined the applicant had not demonstrated that he 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 of May 5, 1987 to May 4, 1988. The director also determined that the applicant was not discouraged from filing during the eligibility period of the legalization program. 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, counsel for the applicant asserts that the applicant has lived in the United States since prior to January 1, 1982. Counsel furnished additional evidence in support of the applicant's claim of continuous residence. Counsel maintains that the director violated paragraph 7 of the CSS Settlement Agreement by failing to issue a Notice of Intent to Deny the applicant's claim of class membership.

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 applying 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 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.

An alien applying 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, its credibility and amenability to verification. *See* 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.

On appeal, counsel asserts that the director violated paragraph 7 of the CSS Settlement Agreement by failing to issue a Notice of Intent to Deny the applicant's claim of class membership. 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.

A review of the record reveals that the district director failed to issue a notice of intent to deny to either the applicant or counsel explaining the perceived deficiency in the applicant's Class Member Application prior to denying the application. If the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provides the

applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The director's finding that the applicant was not discouraged from filing during the eligibility period of the legalization program is a separate issue that relates to the applicant's eligibility for class membership, and therefore will not be addressed in this decision. Pursuant to 8 C.F.R. § 245a.2(p), the AAO has jurisdiction over this appeal on the issue of the applicant's failure to provide evidence of continued unlawful residence during the requisite period.

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. A review of the evidence establishes that the applicant has provided, in totality, relevant, credible and probative supporting documentation to corroborate his claim of continuous residence during the requisite period.

On appeal, counsel provided a notarized declaration from the applicant, which states that the applicant has continuously resided in the United States in an unlawful status since August 1981. The applicant claims that he is a citizen of Mexico and entered the United States without inspection at the age of seven with his grandmother and two brothers. The applicant's I-687 application indicates that the applicant resided at [REDACTED] Norwalk, California, from the period of 1981 until 1991; and attended school at [REDACTED] from the period of 1981 until 1987. The applicant's declaration, executed June 19, 2006, notes that the applicant departed the United States on one occasion, July 13, 1987, and traveled to Tijuana, Mexico. The applicant claims that he remained in Mexico for one day before reentering the United States without inspection at San Ysidro, California. This testimony is inconsistent with the applicant's Form I-512L, Authorization for Parole of an Alien into the United States, issued on August 25, 2005. This document indicates that the applicant was paroled into the United States on December 10, 2005. However, this departure alone does not make the applicant ineligible for temporary resident status under section 245A(a) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a).

The director's Notice of Denial indicates that the applicant has failed to provide school records to establish that he has resided in the United States since prior to January 1, 1982 through May 4, 1988. The regulation at 8 C.F.R. § 103.2(b)(2)(ii) provides, "[w]here a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority." The applicant has submitted a letter from [REDACTED] Office Technician, [REDACTED] which states,

“[d]uring the years of 1981-1988 we were an elementary, kindergarten to grade 7. Our student’s records were forwarded to the high school, Norwalk High and [redacted] High School, grade 8 to grade 12. Unfortunately, all student records are destroyed after seven years. We no longer have any information on [redacted].” Although the applicant has not provided an official school document related to his attendance at [redacted] Middle School, he has submitted a corroborating letter from [redacted], Member, Board of Education, Norwalk-La Mirada Unified School District. This letter, issued on Norwalk-La Mirada Unified School District letterhead, provides, “[i]n Spring 1985, while substituting in the Norwalk-La Mirada Unified School District, I worked at [redacted] Elementary School for a few days . . . I came across a few kids who later migrated to John Glenn High School where I worked from 9/85-7/93 . . . When he arrived at [redacted] as an 8th grader, [redacted] reminded me of meeting me when he was in the 5th grade.” The letter from [redacted] is evidence of the applicant’s attendance at [redacted] Elementary School during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include attestations by churches. Pursuant to 8 C.F.R. § 245a.2(d)(3), these attestations should identify the applicant by name; be signed by an official; show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal or letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. The applicant has submitted a letter from [redacted] Saint John of God Church, dated May 5, 2005. This letter, issued on Saint John of God Church letterhead, provides, “[t]his letter is to verify that [redacted] who resides at [redacted], Norwalk, CA 90650 has been a member of Saint John of God Parish for more than 23 years. I personally have known him, his two brothers and grandmother, since my assignment as Pastor 20 years ago. Over the years he has been active and very involved with the church and its activities . . .” This letter satisfies the stated criteria under 8 C.F.R. § 245a.2(d)(3) as evidence to establish proof of the applicant’s continuous residence in the United States during the requisite period.

The applicant has submitted declarations to corroborate his continued unlawful presence since his entry date of August 1981. In the Notice of Denial, the Director, found that these testimonies “fail to state the eligibility factors of the CSS/Newman settlement agreement, and fail to meet the burden of proving by the preponderance of evidence.” The regulation 8 C.F.R. § 245a.2(d)(3)(vi)(L) states that an applicant may provide “any other relevant document” as proof of his residence. The weight to be given to affidavits or declarations depends on the totality of the circumstances. These documents are evaluated based on the author’s specific, personal knowledge of the applicant’s whereabouts during the time period in question, and documentation to verify the author’s credibility such as a copy of his or her identity document, contact information, and evidence that he or she was present in the United States during the statutory period. The applicant has provided several declarations in which the declarer has provided specific, personal knowledge of the applicant’s whereabouts, information regarding the declarer’s presence in the United States during the statutory period, and documentation to verify

the declarer's identity. The applicant has submitted a declaration from [REDACTED] the applicant's landlord when he was residing at [REDACTED], Norwalk, California. This declaration states, "I have known [REDACTED] since 1981 in which his family rented one of my apartments. My husband wrote a letter for [REDACTED] so he would be able to submit an application for his Green Card, but [REDACTED] was not able to do so. I would see [REDACTED] every day since he rented an apartment from us. . . ." [REDACTED] has provided a copy of her Senior Citizen Identification Card confirming her identity and address at [REDACTED], Norwalk, California. The applicant has also submitted a letter from [REDACTED], Pastor, Holy Spirit Catholic Church. This letter, written on the Holy Spirit Catholic Church letterhead, provides, "I have known [REDACTED] since beginning of 1982. I met him through his grandmother and his two brothers. He was very active at the Parish and I used to see him every Sunday during Mass. I also had close contact with him through the Youth Group of St. John of God Catholic Church. Through the years we have kept in contact." 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. The applicant has provided sufficient documentation to establish continuous unlawful residence, during the requisite period, by a preponderance of the evidence.

The director's Notice of Denial indicates that the applicant is not eligible based on inconsistencies found in his testimony. The notice states, "[y]ou stated that your mother passed away a year before you and [your] brothers came to the U.S. with your grandmother. According to your birth certificate, your mother registered your birth date at the Registry Official in Mexico on August 25, 1981." On appeal, counsel provided a notarized declaration from the applicant's aunt, [REDACTED], which explains that she went to the City Hall in Tijuana to obtain the applicant's birth certificate. [REDACTED] claims that she was informed at the City Hall that the only person who could register the applicant is his birth mother. [REDACTED] claims that she was able to register the applicant under his mother's name after paying additional money to the records official. This declaration provides sufficiently detailed information to overcome the stated inconsistency. The director also noted that the applicant's wife provided testimony inconsistent from the applicant. The notice states, "[y]our wife was crossed referenced about your absent [sic] from the U.S. on the day of her interview. Her testimony is not consistent with your testimony under oath." The Notice of Denial fails to provide any other information regarding this inconsistency. Consequently, the stated inconsistency can not be addressed in this proceeding.

In conclusion, the applicant has met his burden of proof in this proceeding as it relates to his claim of continuous unlawful residence during the requisite period. The applicant has provided, in totality, relevant, credible and probative supporting documentation to corroborate his claim of continuous residence. The applicant has established by a preponderance of the evidence that he resided in the United States in an unlawful status from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, pursuant to 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*.

ORDER: The applicant has overcome the director's decision in part. The matter will be remanded for further action on the issue of the denial of class membership.