



U.S. Citizenship
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[Redacted]

FILE: MSC-05-239-12636

Office: LOS ANGELES

Date: NOV 14 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 F. 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- [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] /DK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Los Angeles, California, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 of May 5, 1987 to May 4, 1988. Specifically, the director stated that at the time of his interview with a CIS officer on June 23, 2006, the applicant testified that he entered the United States for the first time in March of 1982. The director noted that the applicant used an interpreter and was in the presence of his attorney when he made this statement regarding the date of his first entry. The director further noted discrepancies between affidavits submitted by the applicant in support of his application and his testimony regarding when he met the affiants who submitted those affidavits. The director found that doubt was cast on the affidavits because of this. 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's attorney submits a brief asserting that the applicant first entered the United States in May of 1980. He states that previously submitted affidavits are sufficient to meet his burden of establishing by a preponderance of the evidence that he resided continuously in the United States since that date. The brief goes on to say that the Service both ignored evidence in the record and misinterpreted the testimony given by the applicant at the time of his interview. The brief further states that because of personal circumstances that occurred just prior to the date of the applicant's interview, he was not able to think clearly during that interview.

It is noted that, on appeal, the applicant's attorney mistakenly stated that the director was required to issue a Notice of Intent to Deny (NOID) pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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. 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.* 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 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 May 27, 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 during the requisite period to be 1323 Admore Avenue in Los Angeles, California from May of 1980 to May of 1982. He then showed he resided at [REDACTED] from May of 1982 until May of 1984; [REDACTED] from June of 1985 to an unspecified month in 1987; he fails to indicate where he lived until July of 1988 but indicates that beginning in July of 1988 he lived at [REDACTED]. At part #32 where the applicant was asked to list all of his absences in the United States since he first entered, he indicated that he had never been absent from the United States. At Part #33 where the applicant was asked to list all employment since he first entered the United States, he indicated that during the requisite period his first employment was for Unicorn Plus Inc. where he worked from 1984 to 1987. He then indicated that he worked for Hanil Restaurant in Los Angeles from 1987 to 1990. It is noted that the applicant stated in this form that he entered the United States in 1980 but did not show employment from 1980 to 1984.

The record also contains the applicant's Form I-687 submitted in 1991 to establish CSS/Newman class membership. Part #16 of this Form I-687 indicates that the applicant first entered the United States on March 28, 1980. At part #35 where the applicant was asked to list all of his absences since he first entered the United States, he indicated that he had one absence, from February 15, 1988 until April 20, 1988 when he went to Mexico to see his mother who was ill. It is noted that also during this time period, at part #31 the applicant has indicated that he had a daughter who was born in Mexico on March 30, 1988. At part #33 where the applicant was asked to list all of his residences since he first entered the United States, he states that he lived at [REDACTED] from May of 1981. It is noted that this is not the address he showed that corresponds with this date on his subsequently filed Form I-687. The applicant indicated that he then lived at [REDACTED] until May of 1984; he does not show where he lived from May of 1984 until November of 1985, but he shows that in November of 1985 until February 20, 1987 he lived at [REDACTED]. He fails to indicate where he lived from February 21, 1987 until July 14, 1988 but shows that on July 15, 1988 he lived at [REDACTED]. At part #36 where the applicant is asked to list all employment since he entered the United States, he shows that he first worked at Pico Fashion Inc

from February 1981 until January of 1985. He then shows that he worked for Unicorn Plus from January 1985 until March of 1987 and then for Hanil Restaurant on unspecified dates.

It is noted here that dates associated with addresses, addresses themselves and dates associated with employment are not consistently listed on the applicant's two Forms I-687, casting doubt on whether he has accurately represented his addresses of residence and places of employment during the requisite period. It is further noted that the applicant has shown significant gaps in addresses of residence during the requisite period in his Form I-687 that was submitted to establish class membership in 1991. It is also noted that though the applicant showed that he was never absent on his Form I-687 submitted in 2005, he has showed an absence that exceeds forty-five (45) days on his Form I-687 submitted in 1991 to establish class membership. The record also contains a Form for Determination of Class Membership in CSS. V. Meese completed and signed by the applicant on August 15, 1991. On this form, the applicant has also stated that he was absent from the United States from February 15, 1988 until April 20, 1988, a period of sixty-five (65) days because his mother was very sick. This inconsistency casts doubt on whether the applicant has accurately and fully represented his absences from the United States during the requisite period.

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).

Also in the record is a record of the applicant's testimony when he was apprehended for attempting to enter the United States in February of 2003. Here, the applicant stated that he resided in Los Angeles since 1985. In this same testimony the applicant testified and the record supports that he was apprehended in 1975 for attempting to enter the United States with a fraudulent document.

It is noted that this testimony indicates that the applicant did not reside in the United States before 1985.

It is noted that the applicant's record contains a criminal history. This history indicates that on or about July 20, 1986 the applicant was charged with having committed a violation of California Vehicle Code 2002 (A), a hit and run involving property damage, a misdemeanor. The record shows that on May 26, 1992, the case was dismissed, proceedings were terminated and a prior bench warrant was recalled. It is noted that the applicant's one arrest and the subsequent dismissal of the charges against him alone do not render the applicant ineligible to adjust status to that of a Temporary Resident under 8 C.F.R. 245a.2(c)(1) which provides that any alien who has been convicted of a felony or three or more misdemeanors is ineligible to adjust to such status.

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 documentation both in 1991 when he submitted documents with his Form I-687 to establish class membership and in 2005 when he submitted his Form I-687 pursuant to the CSS/Newman Settlement agreements. Details of documents submitted are as follows:

Documentation from 1991:

- An affidavit from [REDACTED] who states that he knows personally that the applicant has maintained continuous residence in the United States since June of 1980 because he has been friends with him since then. He goes on to say that he has had frequent contact with the applicant since that time. Here, the affiant fails to provide an address at which he personally knows that the applicant resided. He further fails to indicate whether there are periods of time during which he did not have contact with the applicant. Though he indicates that he is employed by the United States Navy at the time he signed the affidavit in July of 1991, the affiant failed to include evidence that he himself resided continuously in the United States for the duration of the requisite period. Therefore, this affidavit is found to be insufficiently detailed to establish, by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] who states that the applicant lived with them from May of 1982 to May of 1984 and then from July of 1988 to June of 1990. Here, the affiant does not indicate that it is personally known to him that the applicant entered the United States on a date before January 1, 1982. He provides addresses for the applicant from May of 1982 but not before. Because this affiant has provided testimony that only pertains to part of the requisite period, it can be afforded no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period. Because of its significant lack of detail it can be afforded only minimal weight in establishing that he resided in the United States during the requisite period.
- An affidavit from [REDACTED] who state that they have known the applicant has resided in the United States since January of 1991. On this same affidavit they state that

they have been friends with the applicant since January of 1981. Because this affidavit does not state that the affiants can verify that the applicant has resided in the United States during the requisite period, it can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.

- A photocopy of a certificate for live birth for [REDACTED] the applicant's daughter. This is evidence that the applicant's wife gave birth to a child in the United States on July 2, 1986. Though this certificate establishes that the applicant was present in the United States in 1986, it alone is not sufficient evidence to establish that the applicant continuously resided in the United States for the duration of the requisite period.
- Photocopies of earnings statements in the applicant's name from June 1985 to July of 1986 from Unicorn Plus Inc. While these earnings statements establish the applicant was present in the United States from 1985 to 1986, they do not pertain to the duration of the requisite period. Therefore, they alone do not satisfy the applicant's burden of proof of establishing by a preponderance of the evidence that he resided in the United States continuously for the duration of the requisite period.
- Photocopies of receipts for "apartment 405" for June of 1985 and August of 1986. It is noted that the applicant did not show that he lived at an apartment #405 for any part of 1985 or 1986 on either Form I-687.

Documents submitted in 2005:

- An affidavit from [REDACTED] who states that he met the applicant in 1984 at a family reunion. Here, the affiant does not state whether this reunion was in the United States or not. Though the affiant provides addresses for himself during the requisite period, he indicates that he only knew the applicant during part of that time. He does not indicate that it is personally known to him that the applicant continuously resided in the United States for any specific periods of time during the requisite period or associate addresses of residences with the applicant during the requisite period. Because this affidavit pertains to only part of the requisite period and does not establish that the applicant resided in the United States for any part of that time, this affidavit carries very minimal weight in establishing that the applicant continuously resided in the United States during any part of the requisite period.
- An affidavit from [REDACTED] who states that he first met the applicant in his hometown in 1981. He has previously stated that he was born in Mexico and that his hometown is in Colima, Mexico. Therefore, this affidavit appears to indicate that the applicant was in Mexico at that time. He states that the applicant told him that he entered the United States illegally. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. It indicates that the applicant was in Mexico in 1981, which is not consistent with information provided by the applicant on his Forms I-

687 regarding his absences. Therefore, no weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED], who states that he met the applicant in 1984. The affidavit does not establish whether this meeting was in the United States or not. The affiant states that the applicant told him that he entered the United States illegally. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. Therefore, no weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] who states that the applicant was his client in 1980 and that is how he met him. [REDACTED] indicates that he helped the applicant rent a place to start his own business. However, he does not indicate when this was. The affiant also fails to indicate whether he met the applicant in the United States or in Mexico. He only provides addresses for himself as of January 1982. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. Therefore, no weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] who states that he first met the applicant in 1980 in Los Angeles. He states that he attended social events together with the applicant since that time. However, he does not indicate the frequency of these events or whether there were periods of time during which he did not see the applicant. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. Therefore, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from the applicant's brother, [REDACTED], who states that he lived with the applicant in an apartment. Here, he fails to associate dates with this residence or to indicate whether this apartment was in the United States or in Mexico. He states that he has known the applicant since birth and then also states that when he first met the applicant he was working at Hanil King Restaurant in Los Angeles. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. Therefore, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] who states that the affiant has known the applicant since 1984. The affiant does not indicate where she met the applicant or whether it was in the United States or not. She states that she attended family gatherings with the applicant. However, she fails to state when these gatherings were or whether they occurred in the United States. This affidavit does not associate any addresses of residence in the United States with the applicant during the requisite period. Therefore, very minimal weight can be

afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- A photocopy of a form 1040 for the applicant from 1986. Though this form establishes that the applicant has indicated earnings in the United States during this year, he has not provided W-2 forms for that year or any documents that indicate he was employed for years other than 1985 and 1986 in the United States. Therefore, this document alone does not prove by a preponderance of the evidence that the applicant continuously resided in the United States for the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since May 1980 and was employed in the United States since 1984. The record shows that he has inconsistently represented his absences in forms submitted to the Service, but that in 1991 he indicated he was gone for a sixty-five (65) day period in 1988. It is not clear from the record when the applicant first tried to file for legalization during the initial legalization period and therefore it is not clear whether this absence occurred before or after the date he attempted to file. However, that the applicant was not consistent regarding this absences in forms submitted to the Services, that he made a statement that he did not begin residing in the United States until 1985 when apprehended in 2003, that he has not consistently represented his addresses of residence and that he shows gaps in residence on his Forms I-687 all cast doubt on whether he continuously resided in the United States during the requisite period.

In denying the application the director noted that her office did not find the evidence submitted by the applicant sufficient to establish that he had continuously resided in the United States for the duration of the requisite period. She also noted that at the time of the applicant's interview he indicated that he did not enter the United States until after January 1, 1982.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document." If a legal conclusion of a director were to be made that an applicant could not meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

However, here, affidavits submitted by the applicant do not pertain to the duration of the requisite period. They do not contain sufficient detail to establish that the applicant resided continuously in the United States for the duration of the requisite period. Further, they do not overcome inconsistencies in the record previously noted.

On appeal, the applicant's attorney submits a brief asserting that the applicant first entered the United States in May of 1980. He states that previously submitted affidavits are sufficient to

meet the applicant's burden of establishing by a preponderance of the evidence that he resided continuously in the United States since that date. The brief goes on to say that the Service both ignored evidence in the record and misinterpreted the testimony given by the applicant at the time of his interview. The brief further states that because of personal circumstances that occurred just prior to the date of the applicant's interview, he was not able to think clearly during that interview.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). Regardless of the testimony given by the applicant during his interview, the applicant has not been consistent when representing his first date of entry into the United States to the Service on forms he has submitted and previous testimony provided to officers of the Service. Further, it appears that the applicant has not fully represented his absences from the United States as he shows gaps in his addresses of residence in his Form I-687 and other evidence submitted does not overcome or provide an explanation for these gaps. Therefore, he has not met his burden of establishing, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

The absence of sufficiently detailed 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 on his applications 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--*, *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.