



U.S. Citizenship
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FILE:

MSC-05-127-10612

Office: LOS ANGELES

Date: SEP 10 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: SELF-REPRESENTED¹

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

¹ Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. See <http://www.usdoj.gov/eoir/statspub/raroster.htm> Therefore, this decision will be furnished to the applicant only.

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 that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the record contains a G-28 Notice of Entry of Appearance as Attorney or Representative that indicates that [REDACTED] represents this applicant. The AAO found that [REDACTED] faced an interim suspension after he was convicted on June 19, 2005 which rendered him not eligible to practice law and then was disbarred on September 27, 2007. 8 C.F.R. § 103.2(a)(3) specifies that an applicant may be represented "by an attorney in the United States, as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The term attorney means any person who is a member in good standing of the bar of the highest court of any state and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law. 8 C.F.R. § 1.1(f). In this case, the person listed on the G-28 is DISBARRED. Therefore, the AAO may not recognize counsel in this proceeding.

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 noted that the applicant did not meet his burden of establishing that he entered the United States in an unlawful status before January 1, 1982. The director further stated that the evidence submitted by the applicant in an attempt to establish that he had maintained continuous residence during the requisite period was not found credible. 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.

In this case, 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.

On appeal, the applicant submits a brief, asserting that he has continuously resided in the United States from before January 1, 1982 until May 4, 1988. He attempts to account for the contradictions in his previously furnished evidence.

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).

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 February 4, 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 in [REDACTED], California from April 1984 until December 1984. He then showed that he lived at [REDACTED], California, from January 1985 to June 1986 and then showed that he lived at [REDACTED], California from July 1986 until November 1995. At part #32, where the applicant was asked to list all of his absences from the United States since January 1, 1982, the applicant showed that he left once, from October 1987 until November 1987. The record indicates that at the time of his interview, the applicant stated that he also left the United States for twenty days in 1984. At part #33 of his Form I-687 application, he showed his first employment in the United States to be for Iresa Bros Inc., in Mendota, California from May 1985 to May 1986. He then indicated that he worked for the remainder of the requisite period for Salto's Gardening Services, located at [REDACTED] in Los Angeles, California. Here, the applicant indicates that he was self employed.

At his interview with a CIS officer on August 5, 2005, the applicant stated that he came to the United States in October 1980 and remained continuously until 1984. It is noted that the applicant did not show any employment or a United States address of residence on his Form I-687 before 1984. It is also noted that the record contains a marriage certificate showing the applicant represented an address in Mexico as his place of residence when he attended his marriage ceremony on February 14, 1981. During this interview, the applicant also indicated that he has three children, two of whom were born in Mexico during the requisite period, in 1983 and 1987. The record contains a birth certificate showing that one of these children, [REDACTED] was born on April 14, 1983. As was previously noted, the applicant indicated that he was not absent from the United States from October 1980 until 1984. Though he indicated he was absent from the United States in October and November of 1987 for eleven days, this would not account for his conceiving another child in Mexico who was born in 1987. However, it is further noted that the record does not indicate whether or not the applicant's wife previously entered the United States or that the applicant has indicated that he has proof that these are his biological children. Therefore, though his marriage certificate which indicates that in February 14, 1981 the applicant was in Mexico and represented his address as being in San Lorenzo, Mexico at that time indicates a discrepancy between his testimony regarding remaining in the United States without an absence from 1980 until 1984, it cannot be conclusively established that the dates of birth of his children indicate a similar discrepancy.

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, in the form of three (3) employment verification letters and six (6) affidavits. It is noted that the applicant also submitted financial documents that do not pertain to the requisite period. Because these documents are not relevant to this proceeding, they are not detailed here.

Details regarding evidence submitted by the applicant in an attempt to establish that he maintained continuous residence during the requisite period are as follows:

Employment verification letters:

- An employment verification letter from [REDACTED] located at [REDACTED] St., in Los Angeles, California. This letter states that the applicant worked for this gardening service from June 1986 until May of 1999. This letter is signed by [REDACTED] who indicates that he is the manager and owner of this company and provides a phone number at which the Service can contact him if they have any questions. It is noted that while the dates of this employment are consistent with the dates the applicant showed he worked for a gardening and landscaping services company on his Form I-687, on this form the applicant indicated that the name of the landscaping services company he worked for was [REDACTED] Gardening Services” and that he was self employed at that time. That he is providing a letter from a company with a name that is not consistent with what he has shown as the name as his employer and that is owned by someone named [REDACTED] when he has previously indicated that he was self-employed on his Form I-687 casts doubt on the credibility of this employment letter.
- An employment letter from [REDACTED] that was signed and notarized on September 27, 2004. Here, [REDACTED] indicates that he is the president of [REDACTED] c. In this letter, [REDACTED] z states that the applicant worked for him from May 1, 1985 until May 1, 1986. Mr. [REDACTED] states that the applicant engaged in thinning, weeding and harvesting tomatoes in the San Joaquin Valley at that time. [REDACTED] states that he cannot provide payroll record because his documents were destroyed in a fire. He fails to indicate the date of that fire or provide documentation that this fire occurred. He also supplies an affidavit reflecting the same information and stating that he paid his employees in cash. It is noted that this employment letter is consistent with what the applicant showed on his Form I-687, where he indicated that he only worked for Iresa Brothers from May of 1985 to May of 1986.
- An employment letter from [REDACTED], who indicates that he is the president of Iresa Brother’s, Inc. In this letter, [REDACTED] states that the applicant worked for him from November 1981 until April of 1985. [REDACTED] states that the applicant engaged in thinning, weeding and harvesting tomatoes in the San Joaquin Valley at that time. [REDACTED] states that he cannot provide payroll record because his documents were destroyed in a fire. He fails to indicate the date of that fire or provide documentation that this fire occurred. He also supplies an

affidavit reflecting the same information and stating that he paid his employees in cash and photocopies of his Farm Labor Contractor licenses from 1978 through the requisite period. It is noted that this employment letter conflicts with what the applicant showed on his Form I-687, where he indicated that he only worked for Iresa Brothers from May of 1985 to May of 1986 and with the previously submitted employment letter from [REDACTED]. It is further noted that the applicant did not show an address at which he lived before 1984, further casting doubt on the credibility of this employment letter as accurately representing the dates of the applicant's employment.

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).

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Affidavits:

- An affidavit from [REDACTED] that was signed and notarized on July 16, 2005. Though he was not required to do so, the affiant provided a photocopy of his Certificate of Naturalization, which he obtained on March 28, 1997 as proof of his identity. It is noted that the affiant has not provided evidence that he himself was continuously physically present in the United States during the requisite period. The affiant indicates that he has known the applicant since they both lived in Mexico. Though the affiant indicates that he has seen the applicant since 1981 and that the applicant resided in Los Angeles County since that time, the affiant does not provide an address in the United States at which it is personally known to him that the applicant resided continuously during the requisite period. The affiant fails to state how he knows that the applicant was physically present in the United States in 1981 or state the dates of meetings that he had with the applicant in the United States. Because of its significant lack of detail, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was signed and notarized on May 4, 2005. Though she was not required to do so, the affiant provided a photocopy of her Certificate of Naturalization, which she obtained on May 29, 1997 as proof of her identity. It is noted that the affiant has not provided evidence that she herself was continuously physically present in the United States during the requisite period. The affiant indicates that she has known the applicant since February of 1986 and that he has lived in Los Angeles since that time. Though the affiant indicates that the applicant is a person of good moral character and a nice neighbor, she states that to her knowledge he has been in the United States since 1986, which does not span the duration of the requisite period. The affiant also fails to provide an address in the United States at which it is

personally known to her that the applicant resided continuously during the requisite period. The affiant further fails to state how she met the applicant or describe the dates and frequency of contact she had with him since February of 1986. Because the affiant does not claim to have personal knowledge that the applicant was residing continuously in the United States for the duration of the requisite period and because of its significant lack of detail, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] that was signed and notarized on May 3, 2005. Though she was not required to do so, the affiant provided a photocopy of her permanent resident card as proof of her identity. It is noted that the affiant has not provided evidence that she herself was continuously physically present in the United States during the requisite period. The affiant indicates that she has known the applicant since December of 1984 and that he lived in Los Angeles from then until May 2005. Though the affiant indicates that the applicant is a person of good moral character, she states that to her knowledge the applicant has been in the United States since December 1984, which does not span the duration of the requisite period. The affiant fails to state how she met the applicant or describe the dates and frequency of contact she had with him since December of 1984. Because the affiant does not claim to have personal knowledge that the applicant was residing continuously in the United States for the duration of the requisite period and because of this affidavit's significant lack of detail, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was signed and notarized on May 4, 2005. Though she was not required to do so, the affiant provided a photocopy of her Certificate of Naturalization that is dated May 26, 1995 as proof of her identity. It is noted that the affiant's name is represented as [REDACTED] on this certificate. It is further noted that the affiant has not provided evidence that she herself was continuously physically present in the United States during the requisite period. The affiant indicates that she has known the applicant since January of 1985 and that he lived in Los Angeles from then until May 2005. Though the affiant indicates that the applicant is a person of good moral character, she states that to her knowledge he has been in the United States since January 1985, which does not span the duration of the requisite period. The affiant fails to state how she met the applicant or describe the dates and frequency of contact she had with him since January 1985. Because the affiant does not claim to have personal knowledge that the applicant was residing continuously in the United States for the duration of the requisite period and because of this affidavit's significant lack of detail, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

It is noted that all previously listed affiant's have represented the applicant's name, which is [REDACTED]

- An affidavit from [REDACTED] that was signed and notarized on October 2, 2004. Though she was not required to do so, the affiant provided a photocopy of her Certificate of Naturalization that is dated January 25, 2000 as proof of her identity. It is noted that the affiant has not provided evidence that she herself was continuously physically present in the United States during the requisite period. In her affidavit, the affiant indicates that she has known the applicant since 1984 and that she came to know him because she rented him a room in her house from April until December of 1984. It is noted that the address provided by the affiant as her address of residence is consistent with the address the applicant showed as his address from April to December of 1984. Though the affiant has provided information regarding the applicant's address of residence in the United States from April to December of 1984 that is consistent with what he showed on his Form I-687, this affidavit does not establish that the applicant resided continuously in the United States for the duration of the requisite period. Because the affiant does not claim to have personal knowledge that the applicant was residing continuously in the United States for the duration of the requisite period, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of that period.
- An affidavit from [REDACTED] that was signed and notarized on December 14, 2005. Though she was not required to do so, the affiant provided a photocopy of her Certificate of Naturalization that is dated April 1, 1998 as proof of her identity. It is noted that the affiant has not provided evidence that she herself was continuously physically present in the United States during the requisite period. Here, the affiant indicates that she has known the applicant since 1981 and that he lived in Los Angeles from then until May 2005. She states that the applicant attends her church and goes to the same adult school that she attends. However, she fails to indicate the applicant's dates of attendance at either her church or the adult school and she fails to provide the name of either institution. It is noted that part #31 of the applicant's Form I-687 asked him to list all churches and associations that he was a member of. Here, he did not show that he was a member of a church. The affiant fails to state how she first met the applicant or to describe the dates and frequency of contact she had with him since 1981. Because of this affidavit's significant lack of detail, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

Though it is noted that the two affidavits, that from [REDACTED] and that from [REDACTED] state that the affiants personally knew the applicant resided in Los Angeles, and the employment letter from [REDACTED]'s president [REDACTED] indicates that he worked in the United States since November of 1981, information in documents from these individuals conflicts with what the applicant showed on his Form I-687, where he did not indicate that he lived in the United States until 1984 or begin working in the United States until May of 1985.

In determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the

record. *Matter of E- M--*, *supra*.

Here, only three of the submitted eight affidavits and letters state that the applicant entered the United States before January 1, 1982. Because these affidavits are not consistent with what the applicant showed on his Form I-687, and because affiant's [REDACTED] did not establish that they themselves resided in the United States before January 1, 1982 and provided insufficient details in their affidavits, these affidavits they are accorded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period. Because the applicant submitted two employment letters from Iresa Brothers, Inc. which contain conflicting information regarding his dates of employment, doubt is cast on the credibility of these letters.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since April of 1984 and worked in the United States since May of 1985. The only evidence submitted with the application that is relevant duration of the 1981-88 period in question is inconsistent with what the applicant showed on his Form I-687 and lacks significant detail to establish that he resided continuously for the duration of the requisite period.

In denying the application the director noted the above, and the fact that the applicant's claim at the interview to have commenced residing in the United States in 1980 was unsupported, and contradicted what the applicant himself had put forth on the application.

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 meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

However, here, as previously stated, the affidavits submitted here are not consistent with other evidence in the record and are insufficiently detailed to establish, by a preponderance of the evidence, that the applicant maintained continuous residence for the duration of the requisite period.

On appeal the applicant attempts to explain these contradictions. He submits a brief in which he states that he first submitted an employment letter from [REDACTED] owner of Iresa Bros., attesting to his employment only from May 1985 until May 1986 because he qualified to apply for the Special Agricultural Worker status under Section 210 of the Immigration and Nationality Act (the Act), which would have only required him to have worked for a more limited time to qualify for that benefit. The applicant goes on to say that he actually worked for [REDACTED] from November 1981 until May 1986. It is noted that the most recent letter submitted by the applicant that is signed by [REDACTED] does not indicate that he worked for [REDACTED] after April of 1985. The applicant states that he submitted the first letter and affidavit from [REDACTED] attesting to the one year of employment because that is

all of the employment he needed to qualify for special agricultural worker status under section 210 of the Act. It is noted that the filing period for that status ended in 1988. The applicant filed this application for temporary residence under section 245A of the Act in 2005.

In his brief, the applicant also provides an addresses of residence at which he claims to have resided continuously from August of 1981 until May of 1986 at [REDACTED]. It is noted that this further conflicts with what he showed on his Form I-687 and the affidavit submitted by [REDACTED] both of which indicate that the applicant lived at [REDACTED] from April 1984 until December of 1984, casting doubt on this claimed address of residence. He goes on to say that he is not inadmissible, that he believes he was credible at the time of his interview, that he has testified consistently and that he feels his affidavits are credible and establish, by a preponderance of the evidence, that he maintained continuous residence in the United States during the requisite period.

No additional evidence was submitted with the applicant's appeal.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three people concerning the duration of that period, all of which conflict with what the applicant showed on his Form I-687. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States and made statements in the brief submitted with his appeal that contradicted other evidence in the record.

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 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.