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

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FILE:

MSC-05-244-15621

Office: LOS ANGELES

Date:

APR 15 2008

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-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. The director identified inconsistencies between information in a declaration provided by the applicant and other documents in the record.

On appeal, the applicant attempted to explain the apparent inconsistencies in the record and stated that his application was not properly reviewed. It is noted that the applicant listed [REDACTED] as his representative on the Form I-694 appeal. According to 8 C.F.R. § 292.4(a), when an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the relevant provisions he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. A notice of appearance entered in application proceedings must be signed by the applicant to authorize representation in order for the appearance to be recognized by CIS. Since the record does not contain [REDACTED] signature indicating that he is authorized and qualified to represent the applicant, [REDACTED] is not recognized by the AAO as the applicant's representative.

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).

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) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988.

CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 1, 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 listed the following addresses during the requisite period: [REDACTED], Los Angeles, California from January 1980 to June 1984; and [REDACTED], Anaheim, California from June 1984 to June 1989. At part #32 where applicants were asked to list absences from the

United States since entry, the applicant listed only the following absences: A trip to Mexico for his marriage from September to October 1986; and a trip to Mexico for an emergency from December 1987 to January 1988. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Laborer for Mercado Cali-Mex De Compton (Mercado) from December 1980 to June 1983; laborer for [REDACTED] from June 1981 to June 1984; "cromming [sic]" for "Precision Anodizna & Plat [sic]" (Precision) from June 1984 to June 1985; and auto detailer for "Sea Breeze Collision Cent [sic]" (Sea Breeze) from June 1985 to June 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, some of which does not relate to the requisite period or to the applicant. The applicant submitted contemporaneous documentation that does relate to the requisite period. The applicant provided pay stubs for employment with Scott Salvage for periods during November and December 1981; February to April, August and December 1982; July, August and October 1983; and January, February, April and May of 1984. The record includes no documentation of the applicant's employment with [REDACTED] during January, May to July, and September to November of 1982; January to June, September, November and December of 1983; and March and June of 1984, a total of 20 months during the requisite period, although the applicant indicated on Form I-687 that he was employed by S [REDACTED] from June 1981 to June 1984.

The applicant provided pay stubs for employment with CV Cleanup during August 1985. This information is inconsistent with the applicant's Form I-687 where he failed to list any employment with CV Cleanup during the requisite period. This inconsistency casts some doubt on the authenticity of the pay stubs and calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided pay stubs from Mercado for September and November 1984. These documents are inconsistent with the applicant's Form I-687 where he indicated he was employed by Mercado from December 1980 to June 1983, rather than during September and November 1984. Again, this inconsistency casts some doubt on the authenticity of the pay stubs and calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided pay stubs from Precision Anodizing & Plating Inc. (Precision) for March, June, July, November and December of 1987; and January, March and April of 1988. This information is also inconsistent with the applicant's Form I-687 where he indicated he was employed by Precision from June 1984 to June 1985, rather than during 1987 and 1988. Again, this inconsistency casts some doubt on the authenticity of the pay stubs and calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided Forms 1040 and Forms W-2 for the tax years 1987 and 1988. The Forms W-2 list Precision as the applicant's employer. This is inconsistent with the applicant's Form I-687 where he indicated he was employed by Precision from June 1984 to June 1985, rather than during

1987 and 1988. Again, these inconsistencies casts some doubt on the authenticity of the Forms W-2 and call into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided receipts for payment of rent for the address [REDACTED], Anaheim. The receipts cover the months of September, October, and December 1986; February, April, July, and October 1987; and February and May of 1988. These documents are inconsistent with the applicant's Form I-687 where he failed to indicate that he resided at the [REDACTED] address during the requisite period. This inconsistency casts doubt on the authenticity of the rent receipts and calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant submitted a copy of a lease listing his name as one of the tenants at the [REDACTED] address from May 3, 1986 to April 3, 1987. This document is inconsistent with the applicant's Form I-687, where he failed to list the [REDACTED] address during the requisite period. This inconsistency calls into question the authenticity of the lease and casts doubt on the applicant's claim to have resided in the United States during the requisite period.

The applicant provided an employment card issued by the Immigration and Naturalization Service (INS), presently CIS. The card was issued on May 30, 1972 and states that it is valid until revoked. This document constitutes some evidence that the applicant was present in the United States during May 1972.

The applicant provided a letter to him and his wife from the Internal Revenue Service (IRS). The letter contains information regarding the processing of the applicant's 1987 income tax refund. This document tends to show that the applicant worked in the United States for some portion of 1987.

The applicant provided a copy of his Social Security statement. This document indicates that the applicant had taxed Social Security earnings during the requisite period as follows: \$3,714 in 1984; \$1,280 in 1985; \$0 in 1986; \$1,388 in 1987; and \$9,410 in 1988. This document tends to show that the applicant was employed in the United States for some portion of 1984, 1985, 1987, and 1988. This document also tends to suggest that the applicant was absent from the United States throughout 1986, since no earnings are recorded for him for that year. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the Social Security statement tends to show that the applicant was absent for more than 180 days during the requisite period, and the applicant has failed to provide an explanation of his apparent absence, the Social Security statement tends to indicate the applicant did not reside continuously in the United States throughout the requisite period.

The applicant also provided two attestations in support of his claim of continuous unlawful residence during the requisite period. The declaration from George Ledesma, owner of Little Home Furniture Sales in Huntington Park, California, is dated April 16, 1990. This declaration states that the applicant has been a client of the declarant's business since 1982. The declarant stated that the account of the applicant and his wife has always remained in good standing. However, the declarant failed to attach any account records. He also failed to provide detail regarding whether he consulted any records in preparing the declaration or, if not, how he was able to recall information regarding the applicant's account for approximately eight years. The declarant also failed to provide information regarding where the applicant resided during the requisite period and the declarant's frequency of contact with the applicant. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a "CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations," which lists the declarant as Rachel Chavez Contreras. This document is unsigned and, therefore, carries no evidentiary weight.

The record also includes an additional Form I-687 signed by the applicant. This form is undated, but the content of the form indicates it was prepared after October 1989. 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 listed the following California addresses during the requisite period: [REDACTED], Los Angeles from August 1982 to May 1986; "[REDACTED]," Anaheim from November 1985 to May 1986; and [REDACTED], Anaheim from May 1986 to present. Since the applicant failed to list any addresses prior to August 1982, this information tends to show that the applicant did not begin residing in the United States until after 1982. In addition, this information appears to be internally inconsistent because the applicant listed two addresses for the period from November 1985 to May 1986. Lastly, this information is inconsistent with the current Form I-687 where the applicant failed to list the [REDACTED] address and indicated that he resided at the [REDACTED] address from January 1980 to June 1984 instead of from August 1982 to May 1986; and at the [REDACTED] address from June 1984 to June 1989 instead of from November 1985 to May 1986. At part #32 where applicants were asked to list absences from the United States since entry, the applicant listed only the following three trips to Mexico: A trip during December 1983 to visit his children; a trip during May 1985 to visit his children; and a trip during September 1987 to bring his children back to the United States. This information is inconsistent with the current Form I-687, where the applicant listed a trip to Mexico for his marriage from September to October 1986, and a trip to Mexico for an emergency from December 1987 to January 1988; instead of trips in December 1983, May 1985, and September 1987. At part #36 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Maintenance for [REDACTED] from October 1980 to June 1984; maintenance for C.V. Clean Up from March 1985 to September 1985; and plater for Precision Anodizing & Plating from March 1986 to October 1989. This information is inconsistent with the current Form I-687, where the applicant listed an additional position as laborer for Mercado from December 1980 to June 1983; indicated

he worked for [REDACTED] from June 1981 to June 1984 instead of from October 1980 to June 1984; indicated he worked for Precision from June 1984 to June 1985 instead of March 1986 to October 1989; and listed an additional position as auto detailer for Sea Breeze from June 1985 to June 1988. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States during the requisite period.

In denying the application, the director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director identified inconsistencies between information in the unsigned declaration from [REDACTED] and other documents in the record. Specifically, the director noted that the declarant stated that she knows the applicant came to the United States before 1982 because the applicant's youngest son was born in August 1981 in Mexico, and then the applicant came back to California in late 1981. It is noted that at part #32 of the earlier filed Form I-687, where applicants were asked to list each son and daughter, the applicant listed only the following children, all born in Mexico: Daughter [REDACTED] born on July 23, 1973; and son [REDACTED] born on September 3, 1977. This information is inconsistent with the declaration from [REDACTED]. However, since the declaration is unsigned, it is given no evidentiary weight. If the director erred in giving evidentiary weight to the unsigned declaration, the error is found to be harmless. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant attempted to explain the apparent inconsistencies in the record and stated that his application was not properly reviewed.

In summary, the applicant has not provided credible contemporaneous evidence of residence in the United States relating to the periods January, May to July, and September to November of 1982; January to June, September, November and December of 1983; March and June of 1984; and all of 1986. The applicant has submitted credible contemporaneous documentation only for some portion of 1985, rather than documentation showing that he resided continuously in the United States in 1985. The applicant has submitted attestations from only two individuals regarding his residence during the requisite period. The attestation from [REDACTED] lacks sufficient detail, and the attestation from [REDACTED] is unsigned. The applicant has failed to provide credible evidence of his residence in the United States for at least two and one half years of the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value as evidence of his residence for substantial portions of the requisite period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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