



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] MSC-05-249-10634

Office: HELENA

Date: APR 28 2008  
APR 25 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

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, Helena. The Administrative Appeals Office (AAO) rejected the appeal as untimely. Counsel for the applicant subsequently submitted evidence to the AAO showing that the appeal was timely filed. The AAO will *sua sponte* reopen the appeal and issue a decision to dismiss.

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.

On appeal, counsel for the applicant asserts that the applicant submitted clear and convincing evidence of the applicant's residence in the United States during the requisite period. Counsel resubmits the applicant's 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 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.

An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). “Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p). “Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The applicant’s record contains a Federal Bureau of Investigation (FBI) report, dated July 8, 2005. This report reveals that on August 19, 1990, the Twin Falls, Idaho, Police Department arrested the applicant and charged him with a violation of section 18-2407 of the Idaho Code for *Petit Theft*. Section 18-2408 of the Idaho Code provides that the punishment for *Petit Theft* is a fine not exceeding \$1,000 and/or imprisonment in the county jail not exceeding one year. Pursuant to 8 C.F.R. § 245a.1(o), the crime of *Petit Theft* is defined as a misdemeanor. Since the

applicant has not provided any court documents related to this arrest, the final disposition of the charge is unknown. In any case, one misdemeanor conviction does not make the applicant statutorily ineligible for temporary resident status. See Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

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 6, 2005. The applicant signed his application under penalty of perjury, certifying that the information is true and correct. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Calexico, California from July 1981 until June 1987. The applicant wrote in parentheses that his father lived at this address. It is presumed that the applicant also resided at this address since he has not provided any other residential address for this time period. At part #33, the applicant showed his first employment in the United States to be for [REDACTED] in B. Springs, California from July 1981 until May 1987.

The applicant submitted with his application a copy of his birth certificate. While this document establishes the applicant's identity, it does not corroborate his continuous residence in the United States during the requisite period. On October 24, 2005, the application was interviewed pursuant to his Form I-687 application. The record shows that the applicant submitted a letter from [REDACTED] President, Sun Valley Harvest, Inc., Farm Labor Contractor, located in Brawley, California, dated October 15, 2005. This letter provides:

I hereby, certify that Mr. [REDACTED] had worked for this company moving sprinkler pipes while irrigating lettuce fields for the seasons from 1981-1987. At that time, this person was paid at the rate of \$4.25 to \$4.50 an hour and by cash just as most of our other crewmembers was [sic], so we do not have proper employment records for those employees. My company had ceased operation in 1989; therefore, this information is based only on personal knowledge.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i)(F) provides that if employment records are unavailable, an affidavit form-letter stating that the applicant's employment records are unavailable and why such records are unavailable may be accepted. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. *Id.* Mr. [REDACTED]'s letter fails to fully comply with this regulation. Moreover, the applicant has not listed his employment with Sun Valley Harvest, Inc. on his application. The applicant's Form I-687 application shows his employment from July 1981 until May 1987 as a laborer with [REDACTED] in B.

Springs, California. Therefore, this letter does not have any probative value and credibility as evidence of the applicant's continuous residence in the United States from 1981 until 1987.

The adjudicating officer issued to the applicant a Form I-72, which requests the applicant to furnish clear and convincing evidence of entry to the United States before January 1, 1982 to May 4, 1988. The applicant was afforded 90 days to respond to this request. It should be noted that the burden of proof in this proceeding is by a preponderance of the evidence. *See* 8 C.F.R. § 245a.2(d)(5). Also noted is that the requisite period at issue in this proceeding is prior to January 1, 1982 until the date the applicant attempted to file or was caused not to file his application during the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

In response to this request, the applicant through his counsel submitted numerous documents issued on behalf of [REDACTED]. The applicant has provided this name as his alias on his Form I-687 application.<sup>1</sup> The applicant submitted the following documents:

- A letter from [REDACTED], which provides, "I, [REDACTED] [sic]. . . do hereby certify that Salvador Espinoza rented a house from me. The house is located at located at [sic] [REDACTED] Jerome, Idaho 83338 from February 1985 to December 1998." This letter is signed before a notary by Mr. [REDACTED]'s spouse, [REDACTED]. Ms. [REDACTED] indicates on this letter that [REDACTED] is deceased. This letter is deficient in several respects. First, [REDACTED] has not attested to her own direct personal knowledge of the applicant's residence at this address. Nor has she indicated that she learned of the applicant's residence at this address from her husband's records. Second, the applicant's residential address information on his Form I-687 application is inconsistent with this letter. The application shows that the applicant resided at [REDACTED], Calexico, California from July 1981 until June 1987 and 114 [REDACTED] Jerome, Idaho from September 1987 until August 1992. It indicates that he resided at [REDACTED] from August 1992 until July 1997. Given these discrepancies, this letter does not have any probative value and credibility as evidence of the applicant's continuous residence in the United States from February 1985 until the end of the requisite period.
- A letter from [REDACTED] which provides, "[REDACTED] rented from my husband [REDACTED] a trailer located in [REDACTED] in Jerome, Idaho from March 1982 until January 1985. My husband has since passed away therefore I am writing this letter in support of the receipts that are no longer available." This letter is similarly deficient as probative evidence. First, [REDACTED] has not attested to her own direct personal knowledge of the applicant's residence at this address. Nor has she indicated that she learned of the applicant's residence at this address from her husband's records. Second, the applicant's residential address information

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<sup>1</sup> The applicant's given name on his passport is [REDACTED], his middle name is Salvador, and last name is [REDACTED]

on his Form I-687 application is inconsistent with this letter. As noted above, the application shows that the applicant resided at [REDACTED], Calexico, California from July 1981 until June 1987. Given these discrepancies, this letter does not have any probative value and credibility as evidence of the applicant's continuous residence in the United States from March 1982 until January 1985.

- Copies of an admission ticket to Disneyland, dated April 22, 1981, and a Disneyland brochure with a copyright date of 1981. The applicant's Form I-687 application shows July 1981 as the date of his first residence in the United States. Given this inconsistency, these documents have no probative value and credibility as evidence of the applicant's residence in the United States as of April 22, 1981. Further, there is nothing on this ticket to link it to the applicant.
- Copies of two rent receipts issued from [REDACTED] and [REDACTED] respectively dated July 1, 1982 and March 2, 1982. The receipt from [REDACTED] indicates that the applicant's address is [REDACTED]. As stated above, this is inconsistent with the applicant's residential address information on his Form I-687 application. The applicant shows on his application that he resided in Calexico, California from July 1981 until June 1987. Furthermore, the applicant's trailer address listed on [REDACTED] receipt is inconsistent with her letter. The receipt provides that the applicant's trailer was located in space 2, while [REDACTED]'s letter provides that it was located in space 1. Finally, the receipt dated July 1, 1982 has been visibly altered. The date July 1, 1982 appears to have been changed from July 1, 1992. Given these discrepancies, these documents have no probative value and credibility as evidence of the applicant's residence in the United States during the months of July 1982 and March 1982.
- Copies of an envelope and part of a statement from MCI long distance service. The copy of the MCI envelope is postmarked September 10, 1982 and is addressed to the applicant at [REDACTED], Jerome, Idaho. The MCI statement is also addressed to the applicant at this address. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(5). Had the applicant submitted original documentation, it would have been afforded greater weight as probative and credible evidence. Notably, the applicant's address on these documents is again inconsistent with the applicant's residential address information on his Form I-687 application. The application shows that the applicant resided in Calexico, California from July 1981 until June 1987. Therefore, these documents have no probative value and credibility as evidence of the applicant's residence in the United States as of September 10, 1982.
- A copy of a receipt issued from a cash register. The name "[REDACTED]" is handwritten at the top of this receipt with the date, February 15, 1982. This receipt contains the handwritten notations, FICA, STATE, FED, with accompanying deductions. This indicates that the receipt is a statement of earnings and deductions. However, there is nothing on this receipt to verify that it was issued to the applicant, such as the name and location of the issuing employer. Therefore,

this receipt has no probative value and reliability as evidence of the applicant's residence in the United States as of February 15, 1982.

- A copy of a flyer from the American Red Cross Disaster Relief Program, dated June 1983, featuring a picture of workmen in hard hats. Counsel has failed to explain how this document relates to the applicant. Therefore, this flyer has no probative value and reliability as evidence of the applicant's residence in the United States as of June 1983.
- Copies of four postmarked envelopes containing Mexican postage stamps. Notably, the postmarks on these envelopes are illegible. Additionally, three of the envelopes are not addressed to the applicant, two are addressed to [REDACTED] and one is blank. Evidence in the record, discussed below, indicates that [REDACTED] is the applicant's spouse. At issue is the applicant's own residence in the United States during the requisite period. Given these deficiencies, the envelopes have no probative value and reliability as evidence of the applicant's residence in the United States during the requisite period.
- A copy of a letter written in Spanish, dated October 3, 1984, without an accompanying English translation. Any document containing foreign language submitted to Citizenship and Immigration Services shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Therefore, this letter has no probative value and reliability as evidence of the applicant's residence in the United States as of October 3, 1984.
- Copies of two rent receipts, dated February 10, 1985 and October 4, 1986. These receipts indicate that they were issued for the payment of the applicant's rent at [REDACTED]. As stated above, this information is inconsistent with the residential address information on the applicant's Form I-687 application. The applicant shows on this application that he resided at [REDACTED], Calexico, California from July 1981 until June 1987. Furthermore, the dates on these receipts appear as they may have been altered from February 10, 1995 to February 10, 1985 and October 4, 1996 to October 4, 1986. Had the applicant submitted the original receipts, they could have been assessed for credibility. Given these discrepancies, these documents have no probative value and credibility as evidence of the applicant's residence in the United States during the months of February 1985 and October 1986.
- A copy of a birthday card issued to [REDACTED] and [REDACTED], dated 1986. The record contains additional evidence, discussed below, which indicates that [REDACTED] is the applicant's daughter. However, at issue is the applicant's own residence in the United States during the requisite period. Therefore, this letter has no probative value and reliability as evidence of the applicant's residence in the United States as of 1986.

On January 23, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility

for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.

In response to the NOID, counsel notes that [REDACTED] is the applicant's spouse. Counsel also submits an affidavit from [REDACTED] and a copy of a postmarked envelope addressed to the applicant.

The affidavit from [REDACTED], dated February 1, 2006, provides that the applicant's daughter, [REDACTED] was employed as a caregiver to [REDACTED] spouse from 1986 until 2000. Mr. [REDACTED] notes that during this time period he met the applicant and his spouse, [REDACTED]. This affidavit is a detailed and credible account of [REDACTED] relationship with [REDACTED] from 1986 onwards. However, at issue is the applicant's own residence in the United States during the requisite period. This affidavit fails to provide the date that [REDACTED] first met the applicant. Therefore, this letter is of no probative value as evidence of the applicant's continuous residence in the United States as of 1986.

The copy of the envelope is addressed to the applicant at [REDACTED], Jerome, Idaho. The postmark on this envelope is illegible. The envelope contains a Mexican postage stamp with an issue date of 1988. Hence, this letter was sent to the applicant in 1988 or a later date. The applicant indicated on his Form I-687 application that he resided at [REDACTED], Jerome, Idaho from August 1992 until July 1997. Therefore, this envelope is of no probative value as evidence of the applicant's residence in the United States during the requisite period.

On March 2, 2006, the director issued a denial notice to the applicant. In denying the application, the director determined that the evidence the applicant submitted with his application was insufficient to establish his eligibility for Temporary Resident Status under section 245A of the Act.

On appeal, counsel asserts that the applicant has submitted clear and convincing evidence of the applicant's entry into the United States from before January 1, 1982 until May 4, 1988. Counsel cites to the applicant's previously submitted documentation. As discussed above, these documents contain little or no probative value as evidence of the applicant's continuous residence in the United States during the requisite period. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.