



U.S. Citizenship  
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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: FEB 26 2008

MSC 05 312 14073

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 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.

On appeal, the applicant asserts that all of the evidence he submitted is corroborative of his claim of continuous residence in the United States for the duration of the requisite period. The applicant states that he is eligible for the benefit sought and that the director wrongfully denied his application.

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)(1).

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)(1) 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 August 8, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 stated that he resided at [REDACTED] in Santa Ana, California from November 1981 until December 1988. At part #33, where asked to list information regarding all of his employers in the United States, the applicant indicated that he was self-employed performing landscaping work for Craig Daskalaskis from January 1981 until January 1982. He indicated that he subsequently worked for [REDACTED] in San Juan Capistrano, California from February 1982 until December 1984, and for Pacific States Landscaping, Inc. in El Toro, California from January 1985 until 1993.

The applicant's administrative record also contains a Form I-687 application signed by him on July 15, 1993. On the previous application, he indicated that he worked for [REDACTED] from January 1982 until March 1984, and for Pacific State Landscaping from April 1986 until March 1992. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted above, 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). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous

residence in the United States may include, but is not limited to: 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).

The applicant's record contains the following documentation submitted in support of his claim of continuous residence in the United States during the requisite period:

- A notarized letter dated July 3, 1993 from [REDACTED] who stated that he has known the applicant since the fall of 1981. He indicated that the applicant has "periodically helped me at my house by doing landscaping" in Santa Ana, California. Although [REDACTED] confirms the applicant's claim that he entered the United States prior to January 1, 1982, his statement is insufficient to establish that he had direct, personal knowledge of the applicant's continuous residence in the United States for the duration of the requisite period. The applicant did not indicate that he performed work for [REDACTED] after January 1, 1982. In addition, [REDACTED] did not indicate how he met the applicant, how he dates his acquaintance with him, or how frequently he saw the applicant during the relevant period. Because this letter is lacking in significant detail, it can be given only limited probative value as corroborating evidence of the applicant's residence in the United States.
- A notarized letter dated June 24, 1993 from [REDACTED] who stated that the applicant occasionally worked at his residence and with him at other residences during the years 1982, 1983 and 1984. He stated that the applicant performed landscaping work and "was paid by the owners." [REDACTED] did not indicate how he dates his acquaintance with the applicant, or how frequently he saw him during the years 1982 through 1984. Since he only claims to have seen the applicant "occasionally" over a three year period, it is unclear that he has personal knowledge of the applicant's continuous residence in the United States during this period. Thus, his testimony can be given limited weight as evidence of the applicant's residence in the United States between 1982 and 1984. Also, as noted above, the applicant provided inconsistent information regarding the dates of his casual employment with [REDACTED]. [REDACTED]'s statement does not clarify this inconsistency.
- A photocopy of a notarized letter dated February 5, 1987 from Pacific States Landscaping, Inc. The letter, which is signed by [REDACTED], states that the applicant is an employee of the company and that the company believes that he is legally entitled to work in the United States. The letter is printed on company letterhead. It is noted that the company stationary states: "A Subsidiary of Landscape Specialists, Inc." This employer letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; his or her duties with the company; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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. The letter from [REDACTED] does not meet these standards. He does, however, confirm the applicant's employment with the company as of February 1987, but this letter has no probative value as evidence of the applicant's residence or employment in the United States prior to that date.

- Photocopies of pay stubs issued to "Employee [REDACTED]" by Pacific States Landscaping, Inc., dated May 1986, June 1986, December 1986, and January 1987 through June 1987. These documents do not identify the applicant by name and therefore cannot clearly be associated with him. Absent some credible documentation from the employer indicating that the applicant was assigned this employee number, the pay stubs have no probative value as corroborating evidence.
- A letter dated April 26, 2006 from [REDACTED], Human Resources of Landscape Specialists, Inc., located in Lake Forest, California. [REDACTED] states that the applicant was an employee of Pacific States Landscaping, Inc. from 1986 through 1992, and that the company believed he was legally entitled to work in the United States. Like the letter from [REDACTED], this letter does not meet the regulatory guidelines for employment letters set forth at 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] does not indicate the applicant's address at the time of employment, or indicate the source of the information, i.e., whether the information was taken from official company records and where records are located and whether CIS may have access to the records. This omission is particularly significant, since [REDACTED] does not state that she ever worked for Pacific States Landscaping, Inc., which is apparently a subsidiary or former subsidiary of her employer. Furthermore, the applicant claimed on the instant Form I-687 that he worked for Pacific States Landscaping from January 1985 until 1993, while the employer claims he joined the company some time in 1986. Because of these deficiencies, this letter can be given limited weight in corroborating the applicant's claim of residence in the United States after 1986.
- A form letter affidavit of witness from [REDACTED] dated November 6, 1993. [REDACTED] states that he has known the applicant to be living in Santa Ana, California since January 1981. [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence in this country for the relevant time period, such as the applicant's address(es) of residence. He did not identify how he dates his acquaintance with the applicant or state how frequently he had contact with the applicant during the requisite period. Although not required to do so, [REDACTED] did not provide evidence that he resided in the United States during the relevant period. He did not provide a contact telephone number, so his statements are not readily amenable to verification. Because of the lack of any detail regarding the events and circumstances of the applicant's residence in the United States, this declaration is lacking in probative value.
- A photocopy of a California identification card issued to the applicant on June 2, 1986.

The director denied the application on July 17, 2006. The director acknowledged the evidence submitted by the applicant, but determined it was insufficient to establish by a preponderance of the evidence that the applicant continuously resided in the United States for the entire requisite period. Accordingly, the

director concluded that the applicant had not established his eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant asserts that he believes he is eligible for temporary resident status. He asserts that the denial of his application was erroneous because "the letter from [REDACTED] . . . established periodically personal knowledge of knowing me since 1981." He states that all of the corroborative evidence supported his claim of continuous residence.

The applicant's assertions are not persuasive. The applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period that can be clearly associated with him other than a California identification card issued in June 1986. The applicant's claim of continuous residence in the United States from 1981 through June 1986 is supported only by attestations and letters from individuals and employers, which, as discussed above, are lacking in detail and probative value.

An applicant's failure to provide documentary evidence apart from affidavits cannot be the sole reason for the denial of an application. However, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are lacking in credibility or probative value. Again, the affidavits and employer letters submitted did not contain substantive, credible information or relevant testimony pertaining to the applicant's claim of continuous residence.

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). The absence of sufficiently detailed, consistent 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 reliance upon affidavits and letters with minimal probative value, 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.