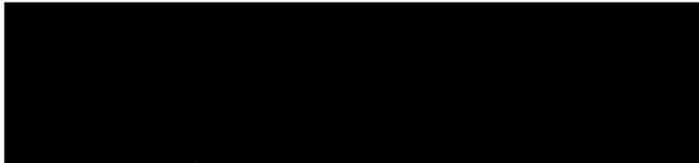




U.S. Citizenship
and Immigration
Services

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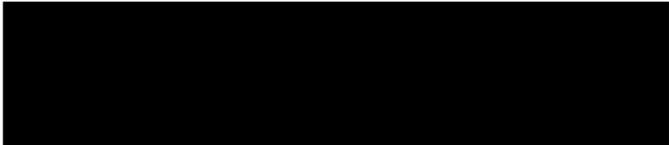
Date: **FEB 28 2008**

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:



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, and that 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, on June 2, 2005. 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 noted that the record contained inconsistent testimony from both the applicant and from his alleged former employer regarding his dates of residency and employment in the United States, thus calling into question the overall credibility of his claim. 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 he denied the application.

On appeal, the applicant states that the statements he made during his interview with a Citizenship and Immigration Services (CIS) officer were truthful, and the director stated no reason to doubt the applicant's oral testimony. The applicant states that his testimony should be presumed truthful unless proven otherwise. He asserts that the affidavits and testimony he submitted all verify that he was in the United States during the appropriate time period. He also states that he has "found other evidence and can now verify his residence" and indicates that additional evidence will be submitted within 30 days. However, as of this date, no further evidence has been received, and the record will be considered complete.

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 be 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. 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 Citizenship and Immigration Services (CIS) on June 2, 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 stated that he resided at [REDACTED] in Mendota, California from April 1985 until June 1986, and at [REDACTED], in Anaheim, California from July 1986 until November 1994. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he performed agricultural work for [REDACTED] in Mendota, California from May 1985 until May 1, 1986, and that he was self-employed, performing landscaping work in Anaheim, California from June 1986 until 1990. Therefore, the applicant did not initially indicate any period of employment or residence in the United States prior to May 1985.

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).

The applicant submitted evidence to establish his continuous residence in the United States from 1994 through 2004, including IRS Forms 1040, Individual Income Tax Return, and Forms W-2, Wage and Tax Statement, for each of these years. However, as these documents do not fall within the statutorily relevant time period, they are not relevant to this matter.

The applicant also submitted a notarized letter dated March 28, 2005 from [REDACTED] prepared on the letterhead of [REDACTED]. [REDACTED] stated that the applicant was employed by his farm labor contracting firm from May 1, 1985 until May 1, 1986 for a total of 105 days, during which time he performed agricultural duties in the Central San Joaquin Valley. He stated that the relevant payroll records were lost in a fire, but he has maintained personal contact with the applicant and "was able to recognize him."

The applicant was interviewed by a CIS officer on December 2, 2005. During his interview, he testified under oath that he lived in Mendota, California from 1981 until 1986, not from 1985 to 1986, as indicated on his Form I-687. He also testified that he worked for Eduardo Sanchez from 1981 through 1986. The officer's notes from the interview indicate that the applicant indicated that he had a friend assist him with his application. However, at part #44 of the application, no one's name and signature appear as the preparer of the application.

The director issued a Notice of Intent to Deny (NOID) on December 2, 2005. The director noted that the applicant's testimony during his interview was inconsistent with what he stated on his written application. The director further observed that the applicant's testimony that he worked for [REDACTED] from 1981 through 1986 was not corroborated by the letter from [REDACTED], who stated that the applicant worked for him from May 1985 until May 1986. The director therefore questioned the validity of the statements made by the applicant during his interview.

In rebuttal to the NOID, the applicant submitted a statement in which he asserted that he resided in the United States for the duration of the requisite period. He provided no further explanation as to why the statements he made under penalty of perjury on his Form I-687 were inconsistent with the statements he made under oath during his interview with a CIS officer.

He submitted the following evidence in support of his response:

- A new notarized letter from [REDACTED], dated January 7, 2006. [REDACTED] states that the applicant worked for his firm from November 1981 through April 1985 for a total of 100 estimated days each year. The remainder of the letter was identical to the previous letter provided by [REDACTED] dated March 28, 2005. The letter was accompanied by evidence that [REDACTED] maintained the requisite farm labor contractor licenses during the relevant period.

██████████ did not provide any explanation as to why he previously indicated that the applicant only worked for him over a period of one year from 1985 to 1986. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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). Since there is no independent evidence indicating the applicant's actual dates of employment, the new letter from ██████████ is not credible.

Regardless, even if CIS found the second letter from ██████████ to be credible or probative, it does not cover the entirety of the requisite period. The applicant has provided no evidence of any type, apart from his own testimony, to establish his residence in the United States from 1986 until the end of the requisite period. In addition, since his claimed employment was only on a seasonal basis, any verification from this employer would not serve to establish the applicant's continuous residence during the remaining 260 days of the year. The employer does not claim to have any knowledge of the applicant's whereabouts during the majority of each year in question.

The applicant also submitted three additional affidavits in support of his response. These include: an affidavit from ██████████ who states that she has known the applicant since February 2001; an affidavit from ██████████, who states that he has known the applicant since May 1994; and an affidavit from ██████████, who claims that he has known the applicant since February 2001. Since the applicant's continuous residence in the United States since 1994 is not at issue here, this evidence is not relevant and will not be discussed further. None of the affiants claimed to know the applicant during the relevant time period.

The director denied the application on June 26, 2006. In denying the application, the director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act. The director specifically noted that the applicant did not address the fact that ██████████ changed the applicant's dates of employment, thereby causing the director to doubt the reliability of the submitted evidence.

On appeal, the applicant asserts that the testimony he provided during his interview was truthful and accurate, and that he did in fact enter the United States in November 1981 and work for ██████████ from November 1981 through May 1986. The applicant suggests that the first letter from ██████████ only covered the period from May 1985 until May 1986 because he "receive[d the]wrong information from the counsel and Believe [sic] he qualify [sic] for Agricultural Season same as Section 210 of the Immigration Reform Act of 1986." The applicant states that the two letters, reviewed together, support his claim that he worked for this employer from November 1981 until May 1986.

The applicant further states that the director should presume his testimony given during his interview to be truthful unless proven otherwise. The applicant states that he testified accurately and has not changed his testimony.

Upon review, the applicant's assertions are not persuasive. 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).

Here, the applicant has relied upon his own inconsistent testimony and the inconsistent testimony of ██████████ ██████████ to establish his continuous residence in the United States from November 1981 until May 1986. Contrary to the applicant's assertions on appeal, he did in fact change his testimony subsequent to completing his Form I-687, with respect to his dates of residence and employment. He has not submitted a cogent explanation as to why he initially indicated on his application that he first resided in the United States in 1985, or why he initially indicated only one year of employment with ██████████. With respect to the two different letters from ██████████, the applicant implies that he obtained the initial letter under the advice of counsel, perhaps to be submitted in support of an application for temporary resident status under section 210 of the Act. Again, 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). It is noted that the applicant was 13 years old in 1981, thus casting further doubt on his claim that he commenced employment as an agricultural laborer for ██████████ at that time. The applicant has not submitted any other evidence in support of his claim that he resided in the United States between November 1981 and May 1986.

Further, as noted above, the applicant has submitted no evidence pertaining to his residence in the United States subsequent to May 1986. 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 absence of sufficiently detailed and consistent evidence 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 inconsistencies in the record and the applicant's reliance upon employment letters 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.