

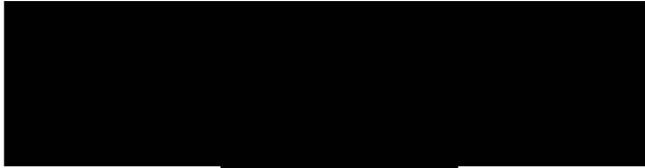
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FILE: [Redacted]
MSC-05-153-10178

Office: LOS ANGELES

Date: **JUL 15 2008**

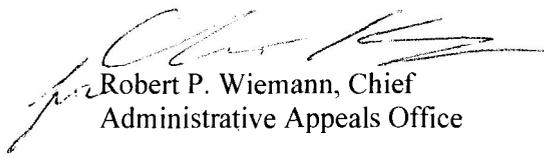
IN RE: Applicant: [Redacted]

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: 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 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, 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. Specifically, the director stated that there were discrepancies in the record regarding the applicant's employment during the requisite period and that she found that evidence submitted by the applicant did not allow him to meet his burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief in which he attempts to account for discrepancies in the record noted by the director.

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) 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 applicant 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 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 or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in Mendota, California from 1981 until June 1986; and [REDACTED] in Santa Ana, California from July 1986 until May 1995. It is noted that the applicant originally indicated that his first residence in the United States in Mendota, California began in April 1985 but that this date appears to have been changed at the time of the applicant’s interview with a Citizenship and Immigration Services (CIS) officer pursuant to his Form I-687 application. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent one time during the requisite period when he went to Mexico to visit family from December 1987 to January 1988. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that his first employment in the United States was for Iresa Bros. Inc. in Mendota, California from May 1985 until May 1986. He went on to indicate that he was then employed as

a driver for Lepes Nursery in Garden Grove, California from June 1986 until May 1989. It is noted that the applicant did not indicate that he was employed prior to 1985 on his Form I-687. It is further noted that the applicant's date of birth is August 5, 1969. Therefore, he would have remained a minor until August 5, 1987.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 the following documents that are relevant evidence as proof of his residence in the United States during the requisite period:

1. An affidavit from [REDACTED], who indicates that he was the president of Iresa Bros., Inc. This affidavit was notarized on April 13, 2006. The affiant indicates that he employed the applicant from November 1981 until April 1985 for a total of 100 days each year. It is noted that the applicant would have been 12 years old in November 1981. The affiant states that all of his documents were destroyed in a fire and therefore he cannot provide payroll records. He states that he recognizes the applicant since they have personal contact with each other on a yearly basis. It is noted that the applicant indicated that he worked for Iresa Bros., Inc. from May 1985 until May 1986 on his Form I-687. This inconsistency regarding when the applicant worked for Mr. [REDACTED] casts doubt on the accuracy of the applicant's dates of employment as stated in this employment letter.
2. An affidavit from [REDACTED] that was notarized on April 15, 2006. The affiant states that he knows that the applicant resided in the United States in Mendota, California from November 1981 until June 1986 and then in Santa Ana, California from July 1986 until 1995. His affidavit indicates that he is able to determine the date of the beginning of his acquaintance with the applicant in the United States because the applicant was a truck driver for a vendor. It is again noted that the applicant would have been 12 years old in 1981. Therefore, it is not plausible that the applicant would have been legally able to drive at that time. Further, on his Form I-687, the applicant indicated that his first employment in the United States was in May 1985 when he worked as an agricultural worker and that he began working as a driver in 1986. This affiant fails to state the frequency with which he saw the applicant during the requisite period or to provide further details regarding when

and where he first met the applicant. Because this affidavit is significantly lacking in details, it carries very minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.

3. An affidavit from [REDACTED] that was notarized on April 15, 2006. The affiant states that she knows that the applicant resided in the United States in Mendota, California from November 1981 until June 1986 and then in Santa Ana, California from July 1986 until 1995. Her affidavit indicates that she is able to determine the date of the beginning of her acquaintance with the applicant in the United States because the applicant made truck deliveries. Further details regarding when and where the applicant was employed in this capacity were not provided. It is noted that the applicant would have been 12 years old in 1981. Therefore, it is not plausible that the applicant would have been legally able to drive at that time. Further, on his Form I-687, the applicant indicated that his first employment in the United States was in May 1985 when he worked as an agricultural worker and that he did not work as a driver until 1986. This affiant fails to state the frequency with which she saw the applicant during the requisite period or to provide further details regarding when and where she first met the applicant. Because this affidavit is significantly lacking in details, it carries very minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
4. An affidavit from [REDACTED] who indicates that he is the president of Iresa Bros., Inc. This affidavit was notarized on February 18, 2005. The affiant states that he employed the applicant from May 1, 1985 to May 1, 1986 for a total of 105 days. He states that the applicant was employed thinning, weeding and harvesting tomatoes in the Central San Joaquin Valley. The affiant states that all of his documents were destroyed in a fire and therefore he cannot provide payroll records. He states that he recognizes the applicant since they have personal contact with each other on a yearly basis. It is noted that the applicant subsequently submitted the previously noted affidavit from this affiant that indicates that he worked for Mr. [REDACTED] from November 1981 until April 1985. This inconsistency regarding when the applicant worked for Mr. [REDACTED] casts doubt on the accuracy of the applicant's dates of employment as stated in both employment letters submitted by this affiant.

It is noted that the applicant has submitted documents as proof of his residence after the requisite period including: his California Driver License issued to him in 1990; his California Commercial Driver License issued to him in 1996; tax documents for years subsequent to the requisite period; his children's birth certificates that show that he had children born in the United States after the requisite period ended; and an employment verification letter showing his employment for years subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that he resided in the United States for the duration of the requisite period. That period began on a date prior to January 1, 1982 and ended when the applicant attempted to apply for legalization during the original filing period, which was from May 5, 1987 to

May 4, 1988. Because these documents are proof of his residence after that period ended, they are not relevant to this proceeding.

The director denied the application on June 8, 2006. In doing so, she noted the discrepancies in the record regarding the applicant's employment during the requisite period in the affidavits from [REDACTED]. The director also noted that affiants [REDACTED] and [REDACTED] claimed to be able to verify that they met the applicant in November 1981 because he was a delivery truck driver. However, the director noted that this was not plausible, as the applicant would have been 12 years old in 1981. The director went on to note that the applicant first obtained his driver's license in 1990 and did not obtain a commercial driver's license until 1996. The director found that the evidence submitted by the applicant did not allow him to meet his burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief in which he asserts that he worked for Iresa Bros. from November 1981 until May 1986 and then Lepes Nursery from June 1986 to May 1989. He goes on to say that he submitted an employment letter from Iresa Brothers Inc. that stated that he worked only from May 1985 until May 1986 for 105 days because he received the wrong information from his attorney. It is noted that Mr. [REDACTED]'s statements in a notarized document regarding the applicant's dates of employment should not have been influenced by advice from an attorney. The applicant states that he worked for Iresa Bros. Inc. from November 1981 until May 1986. He asserts that he was 12 years old when he entered the United States and goes on to say that many Mexican nationals work from the age of seven in the agricultural industry.

The AAO has reviewed the evidence submitted by the applicant in support of his application. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail such that they can only be accorded minimal weight as proof that the applicant resided in the United States during the requisite period. The two affidavits from [REDACTED] are not consistent regarding the dates that Mr. [REDACTED] employed the applicant. Further, the affidavit submitted by Mr. [REDACTED] that states that he employed the applicant from November 1981 until April 1985 is not consistent with what the applicant stated on his Form I-687. The applicant's statement in the brief that he submitted with his appeal in which he stated that he worked for Mr. [REDACTED] from November 1981 until May 1986 is not consistent with either letter submitted by Mr. [REDACTED] or with what the applicant indicated on his Form I-687. These inconsistencies cast doubt on the applicant's claim to have resided in the United States for the duration of the requisite period.

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).

Further, the applicant was 12 years old when he states that he entered the United States. However, he has failed to submit an affidavit or declaration from an adult who was responsible for his well being during the requisite period. He has also failed to submit an affidavit or declaration from either of his parents that describe the events and circumstances of his residence in the United States during the requisite period.

In this case, 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.