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FILE: [Redacted]
MSC-06-098-12221

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Date: JUL 17 2008

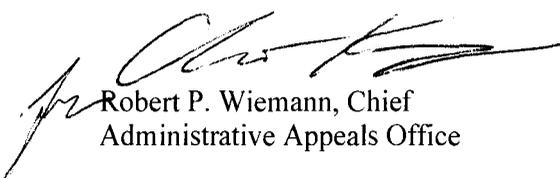
IN RE: Applicant: [Redacted]

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 because the applicant submitted evidence and testified that he departed from the United States in January 1988 and did not re-enter the United States again until 1998, he failed to maintain continuous unlawful presence in the United States during the requisite period, which the director states was from a date before January 1, 1982 through May 4, 1988. 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 confirms that he did leave the United States in January 1988, but goes on to state that his mother attempted to apply for legalization during the original legalization period in December 1987 but was turned away at that time because she had previously left the United States to sign divorce paperwork from November 15, 1986 until December 20, 1986.

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 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 Citizenship and Immigration Services (CIS) on January 6, 2006. 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 at [REDACTED] in Los Angeles, California from July 1981 until December 1987 and [REDACTED] in Huntington Park, California from January 1986 until January 1988. It is noted here that the applicant has indicated he resided at two different addresses from January 1986 until December 1987. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period. He showed his first and only absence from the United States to have been from January 1988 until February 1998. At part #33, where the applicant was asked to list all of his employment in the United States since

he first entered, he showed that he was not employed during the requisite period. It is noted that the applicant was born in 1973. Therefore, he would have continued to be a minor for the duration of the requisite period.

Also in the record is a sworn statement taken from the applicant on November 27, 2006 at the time of his interview with a CIS officer pursuant to his Form I-687 application. In this statement, the applicant asserted that he first entered the United States in July 1981 and then left the United States in January 1988.

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 applicant submitted the following documents in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period:

An affidavit from [REDACTED] that was notarized on December 26, 2005. The affiant states that the applicant and his mother resided with her from July 1981 until January 1988 because the applicant's mother was going through a divorce. She states that the applicant's mother is her cousin. She goes on to say that the applicant's mother helped her with her newborn child, who was born on July 16, 1981, while the applicant and his mother were living with the affiant. The affiant states that she personally took the applicant and his mother to an immigration office where they attempted to apply for legalization in January 1987. She states that the applicant's mother's application was rejected because she had previously traveled to Mexico to sign divorce papers. It is noted here that the original filing period for legalization was from May 5, 1987 until May 4, 1988. Therefore, it would not have been possible for an individual to apply for legalization before that time. The affiant states that the applicant resided with her on 2nd Street in Los Angeles from July 1981 until December 1987 and that they all resided on [REDACTED] in Huntington Park, California from January 1986 until January 1988. It is noted that this is consistent with what the applicant showed on his Form I-687. However, it is also noted that this indicates that both the affiant and the applicant resided at two addresses simultaneously from January 1986 until December 1987. The affiant further states that both the applicant's mother and she home-schooled the applicant while he resided with them in the United States. This affiant submits the following with her affidavit:

- A letter addressed to the affiant that is dated December 18, 1985 and indicates that she has been a member of a pre-paid legal services company since December 19, 1983. This letter shows the affiant to reside on 2nd Street in Los Angeles, California;
- A court document issued to the affiant on May 19, 1987;
- A notice of interest due issued to the affiant indicating a payment was due on February 6, 1985;

- A notice of interest due issued to the affiant indicating that a payment was due on February 14, 1987;
- An affidavit to amend the affiant's daughter's birth certificate to show her daughter's name to be [REDACTED]. This document is dated August 11, 1981. This shows that the affiant resided on 2nd Street at the time she signed this document;
- An immunization record for the affiant's daughter, [REDACTED], who the document indicates was born on July 16, 1981. This document indicates that the affiant's daughter received immunizations regularly from 1981 until 1986;
- And a birth certificate that shows the affiant's daughter was born on July 16, 1981 in Los Angeles, California.

The director denied the application for temporary residence on December 9, 2006. In denying the application, the director stated that because the applicant stated that he departed from the United States in January 1988, he failed to maintain continuous residence in the United States for the duration of the requisite period. It is noted that evidence in the record indicates that the applicant's mother attempted to apply for legalization and was turned away on a date before January 1988. However, it is also noted that the credibility of this evidence is called into question, as it states that the applicant's mother attempted to apply for legalization in January 1987, which was before the original application period.

On appeal, the applicant submits a declaration and additional evidence in support of his application. Details of these documents are as follows:

- A declaration from the applicant that is dated January 3, 2007. In this statement, the applicant asserts that he first entered the United States with his mother in July 1981. He states that his mother attempted to apply for amnesty during the original filing period in December 1987. It is noted that this is not consistent with the previously submitted affidavit from [REDACTED] that was notarized on December 26, 2005. This previously submitted affidavit states that the applicant's mother applied for legalization on January 1987. The applicant goes on to say that his mother was turned away and told she was not eligible for legalization because she had traveled to Mexico from November 15, 1986 until December 20, 1986 to file divorce paperwork. He states that his aunt, [REDACTED], submitted a statement that explains the circumstances of his residency during the requisite period.
- A letter from Herminidad Mexicana Nacional that is dated January 4, 2007. This letter states that though the applicant was in possession of affidavits from his mother and his uncle at the time of his interview with a CIS officer, he was not asked to present additional evidence. Therefore he did not submit these documents. This letter states that this is why he is submitting these and other documents with his appeal.
- An affidavit from [REDACTED] that is dated November 9, 2006 and was notarized on November 22, 2006. The affiant submits previously submitted and additional

documentation as proof of her residency in the United States during the requisite period. The affiant states that she would like to provide the correct date that she took her cousin, the applicant's mother, and the applicant to an immigration office during the original filing period. She states that the date should have been December 1987 instead of January 1987. The affiant fails to indicate why she previously indicated that the applicant's mother attempted to apply for legalization in January 1987. She further fails to indicate how she is able to confirm the date that the applicant's mother attempted to apply for legalization during the original filing period. She does not state whether the applicant was absent from the United States during the requisite period. It is noted that the affiant submitted the following documents with her affidavit:

- A 1987 Form W-2 issued by Jar Incorporated to "[REDACTED]" who resided at [REDACTED] in Los Angeles, California. It is noted that the affiant's name is spelled [REDACTED] and that she indicated that she resided both on [REDACTED] and on [REDACTED] in 1987 and on [REDACTED] in 1988, but not on [REDACTED] during either of those years.
 - A 1987 Form W-2 issued by California Heat, Inc to "[REDACTED]" who resided at [REDACTED] in Los Angeles at the time the form was issued. It is noted that the affiant's name is spelled [REDACTED] and that she indicated that she resided both on [REDACTED] and on [REDACTED] in 1987 and on [REDACTED] in 1988, but not on [REDACTED] during either of those years.
 - Forms 1040A and 540A for [REDACTED] for tax year 1987. These forms show the address for [REDACTED] to be [REDACTED]. It is noted that the affiant's name is spelled [REDACTED]. It is further noted that these forms do not show either the applicant or his mother was a dependent of the affiant.
- An affidavit from [REDACTED] that is dated November 9, 2006 and was notarized on November 19, 2006. The affiant states that the applicant is his god son. He goes on to say that he knows the applicant entered the United States in July 1981. He states that the applicant's mother was married to his own brother but, because the applicant's father was abusive, the applicant's mother moved to the United States. He states that he cared for the applicant when the applicant's mother went to Mexico to finalize divorce papers. However, this affiant fails to indicate the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time when he did not see the applicant during that time. Because it is significantly lacking in detail regarding the applicant's residence in the United States, this affidavit carries only very minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
 - An affidavit from [REDACTED] that was notarized on November 22, 2006. The affiant states that she first attempted to file for legalization in December 1987. She states that the applicant's name was on her application when she attempted to do so. She goes on to say that her cousin, Mrs. [REDACTED], took her to the Plaza del Sol Immigration

office to apply for this benefit. However, she asserts that an office informed her that her absence from the United States when she went to Mexico caused her not to qualify for legalization. She goes on to say that she left the United States in January 1988 with the applicant. She does not indicate whether the applicant was absent during the requisite period in her affidavit. She explains that she home-schooled the applicant from July 1981 until January 1988 because she was afraid that her ex-husband might find her and the applicant and harm them. It is noted that while the affiant indicates in this affidavit that she resides in Tepic, Nayarit Mexico, this document was notarized in Los Angeles, California.

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).

Though this applicant was afforded the opportunity to provide this broad range of evidence pursuant to the regulations, he submitted affidavits from three relatives, his aunt/his mother's cousin, [REDACTED], his uncle/god father [REDACTED] and his mother, [REDACTED] in support of his application. The applicant's uncle and god father, [REDACTED], does not state the frequency with which he saw the applicant during the requisite period. [REDACTED] alternately referred to in the record as the applicant's aunt and as his mother's cousin, provided inconsistent testimony regarding when the applicant's mother attempted to file for legalization during the original filing period. The applicant's mother testified that the applicant resided with her and [REDACTED], but she did not state whether the applicant was absent from the United States during the requisite period. Though the applicant explains that he was home schooled during the requisite period, which would account for the absence of school records in this case, he has not explained why he is unable to present other documents as proof of his or his mother's residency during the requisite period.

The AAO has reviewed the documents previously submitted by this applicant with his application and those that he submitted with his appeal. Though the applicant has submitted a new affidavit from [REDACTED] that shows that his mother attempted to apply for legalization during the original filing period, this affiant does not explain why her previously submitted affidavit showed that his mother attempted to apply for legalization on a date that occurred before the original filing period began. She further fails to indicate how she can verify the date that the applicant's mother attempted to apply for legalization during the original filing period. This inconsistency casts doubt on the assertions made by the affiant regarding when the applicant's mother first attempted to file for legalization during the original filing 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).

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 he 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.