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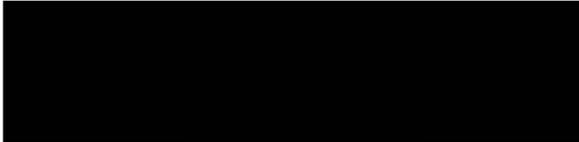
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-101-24592

Office: LOS ANGELES

Date: **JUL 17 2008**

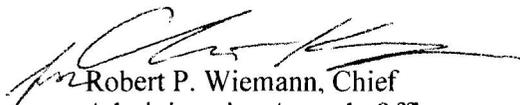
IN RE: Applicant: [REDACTED]

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 though the applicant submitted affidavits in support of his claim of having resided continuously in the United States for the duration of the requisite period, the affidavits he submitted 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.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that he was nervous and confused at the time of his interview and therefore he confused dates at that time. He submits additional evidence in support of 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) 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 CIS on January 9, 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: [REDACTED] in Pacoima, California where he resided from June 1981 until March 1988; and [REDACTED] in San Fernando, California from March 1988 until June 1992. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from the United States once during the requisite period when he went to Mexico to visit his family from May to June in 1987. 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 employed as a gardener for ██████████ from an illegible month in 1981 until August 1988. It is noted that the applicant's date of birth is August 5, 1966. Therefore, he would have been 14 years old in 1981.

Also in the record is a sworn statement taken from the applicant at the time of his interview with a Citizenship and Immigration Services (CIS) officer pursuant to his Form I-687 application on November 22, 2006. In this statement, the applicant asserted that he attempted to apply [for legalization] in June of 1987 but was rejected at that time. He went on to state that he left the United States one time in May of 1987 and returned from that absence in June of 1987 illegally.

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).

Here, the applicant initially failed to submit evidence that he resided in the United States for the requisite period apart from his own testimony.

Therefore, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006 in which he states that the applicant failed to provide evidence that: he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date that he or his parent or spouse was turned away by the INS when he tried to apply for legalization and; that he was continuously physically present in the United States except for brief, casual and innocent departure from November 6, 1986 until the date that he or his parent or spouse was turned away by the INS when they tried to apply for legalization; and that he was admissible as an immigration. The director of the National Benefits Center afforded the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following evidence that is relevant to his residency in the United States during the requisite period:

- An affidavit from ██████████ that was notarized on April 19, 2006. The affiant submitted a photocopy of her California Driver License issued on September 19, 2002 and a

photocopy of her Certificate of Naturalization with her affidavit. The affiant states that she met the applicant through a mutual friend. She goes on to say that she and the applicant are good friends. Though she speaks of his moral character, the affiant does not indicate when or where she met the applicant or whether she met him in the United States. She does not indicate the frequency with which she saw the applicant during the requisite period. She fails to indicate whether there were periods of time during the requisite period when she did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 April 18, 2006. The affiant submitted a photocopy of her California Senior Citizen Identification Card issued to her on January 30, 2002 and her Permanent Resident Card with her affidavit. The affiant states that she met the applicant in 1981 when they resided together with his brother [REDACTED] at [REDACTED] in Pacoima, California. However, the affiant does not indicate the dates that she resided at this address or whether she resided at this address for all of the requisite period. She fails to indicate whether there were periods of time during the requisite period when she did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 April 19, 2006. The affiant submitted a photocopy of her California Driver License issued to her on January 21, 2005 and her Permanent Resident Card with her affidavit. The affiant states that she met the applicant in 1981 while she was working. She states he worked as a gardener at the same house where she was a housekeeper. Though the affiant attests to the applicant's moral character, she fails to state the frequency with which she worked with or saw the applicant during the requisite period. She further fails to indicate whether there were periods of time during that period when she did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 April 19, 2006. The affiant submits a photocopy of her California Driver License issued on July 7, 2004 and a photocopy of her Resident Alien Card with her affidavit. The affiant states that she met the applicant through a mutual friend named [REDACTED] while the applicant was residing on [REDACTED] in Pacoima, California. While this affiant speaks of the applicant's moral character, she fails to indicate the frequency with which she saw the applicant during the requisite period. She further fails to indicate whether there were periods of time during the requisite period when she did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

The director denied the application on November 22, 2006. In her Notice of Denial the director stated that though the applicant submitted affidavits in support of his application, the affidavits were not sufficient to meet the applicant's burden of proving that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a brief in support of his application that is dated December 13, 2006. In this brief he asserts that he did arrive in the United States in 1981 but that he was nervous and confused at the time of his interview, which caused him to confuse dates. He states that though he resided in the United States since 1981 but he does not have receipts for bills from that time. He submits the following additional evidence in support of his application:

- An affidavit from [REDACTED] that is dated December 11, 2006 and was notarized on December 13, 2006. The affiant submits photocopies of his Certificate of Naturalization and a photocopy of his California Driver License issued to him on June 18, 2004 with his affidavit. It is noted that the applicant spelled his first name "[REDACTED]" on his affidavit. It is also spelled this way on the State of California certificate from a notary. However, the identity documents submitted by the applicant indicate that his name is actually "[REDACTED]" The affiant states that he knows the applicant has been present in the United States since 1981. He states that the applicant lived near him. He goes on to say that he often sees the applicant on special occasions and that they often talk on the telephone. Though he attests to the applicant's moral character, he does not state the frequency with which he saw the applicant during the requisite period. He fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 is dated December 12, 2006 and was notarized on December 13, 2006. The affiant submits a photocopy of his California Identification Card issued to him on March 7, 2006 and a photocopy of his Permanent Resident Card with his affidavit. It is noted that the identity documents submitted by the applicant indicate that his name is actually spelled "[REDACTED]". The affiant states that he is aware that the applicant has been present in the United States since 1981. He states that he met the applicant at a gathering at a friend's house. He states that he is friends with the applicant and that they speak on the telephone and go on outings together. Though he speaks of the applicant's moral character, he does not state the frequency with which he saw the applicant during the requisite period. He fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 is dated and was also notarized on December 13, 2006. It is noted that this affidavit signed by [REDACTED] begins with the sentence, "I, [REDACTED], declare and state the following . . ." The affiant submits a photocopy of her Certificate of Naturalization issued May 3, 1962 and a photocopy of her California Driver License issued April 22, 2004 with her affidavit. It is noted that the applicant's name on both documents is spelled [REDACTED]. The affiant states that she knows that the applicant has been present in the United States since 1981. She states that she met the applicant through a mutual friend at a family gathering. Though the affiant states that she speaks on the phone with the applicant and visits his home, she does not indicate the frequency with which she saw the applicant during the requisite period. She fails to indicate whether there were periods of time during the requisite period when she did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded 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 is dated and was also notarized on December 13, 2006. The affiant submits a photocopy of his California Driver License issued to him on May 3, 2004 with his affidavit. The affiant states that he knows the applicant has been present in the United States since 1981. He states he met the applicant through his neighbor who worked with the applicant. Though he speaks of the applicant's moral character, he does not state the frequency with which he saw the applicant during the requisite period. He fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

The AAO has reviewed all of the evidence submitted by the applicant in support of his claim of having resided continuously in the United States for the duration of the requisite period. Though the applicant submitted affidavits in support of this claim, none of the affiants from whom he submitted these affidavits stated the frequency with which they saw the applicant during the requisite period or indicated whether there were periods of time when they did not see the applicant during that time. Though affiant [REDACTED] stated that she met the applicant when she resided at the same place of residence as the applicant in 1981, she did not indicate how long she resided at this address, state the frequency with which she saw the applicant while she was living there or indicate whether there were periods of time when she did not see the applicant either while she resided with him or after that time. Though the applicant states that he entered the United States in June 1981 when he was 14 years old, he does not indicate whether there was an adult who was responsible for his welfare in the United States while he was a minor, nor does he submit an affidavit from such an individual. Thus, though the applicant has testified that he resided continuously in the United States for the duration of the requisite period and that he was only absent from the United States once during that time, he has not submitted evidence that allows him to prove that he maintained continuous residency during that time by a preponderance of the evidence for the reasons noted above.

In this case, the absence of sufficiently detailed, probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 sufficiently detailed, 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.