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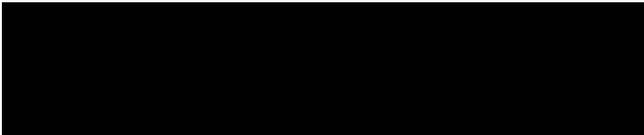
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-098-23950

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 the probative value of evidence that the applicant submitted in support of his claim of having maintained continuous residence in the United States during the requisite period was limited. Therefore, she found that the applicant failed to meet his burden of proof and determined he was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he confused dates at the time of his interview. 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 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 January 6, 2006. At part #4 where the applicant was asked to list all other names he had used or was known by, he stated that he had also used the name [REDACTED]. 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 address in the United States during the requisite period to be: [REDACTED], Sun Valley, California from 1979 to 1992. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that during the requisite period, he was absent during the month of July 1987 when he traveled to Mexico because of a family emergency. 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 by Original Lamp where he worked doing shipping and receiving in Sylmar, California from 1980 to 1986 and then at Valco where he was a machine operator from 1986 to 1991.

Also in the record is a Form I-687 submitted to establish class membership. The applicant signed this Form I-687 on June 25, 1993. At part #4 where the applicant was asked to list all other names he had used or was known by, he stated that he had never used any other names. It is noted that this is not consistent with what the applicant indicated on his subsequently Form I-687. At part #32 of this Form I-687 application where the applicant was asked to list all of his children, he did not indicate that he had children. At part #33 of this Form I-687 where the applicant was asked to list all of his addresses of residence, he indicated that he resided on Sherman Way in Sun Valley, California from November 1981 until December 1992. It is noted that the applicant indicated in his subsequently filed Form I-687 that he began residing at this address in 1979 rather than in 1981. At part #36 where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed by a Mr. [REDACTED] in Pacoima, California as a gardener from November 1981 until he signed this Form I-687. It is noted that this is not consistent with what the applicant indicated to be his employment during the requisite period on his subsequently filed Form I-687. The inconsistencies noted above cast doubt on the applicant's claims of having maintained continuous residence 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 in the record is a Form for Determination of Class Membership in *CSS Vs. Meese*. On this form, the applicant indicated that he first entered the United States in November 1981.

Also in the record are the notes from the Citizenship and Immigration Services (CIS) officer who interviewed the applicant pursuant to his Form I-687 application on October 16, 2006. These notes indicate that the testified that he did not have any children. He also testified that he worked for Original Lamp from 1980 to 1986 doing shipping and then as a machine operator for Valco Automotive from 1986 to 1988. It is noted that on his Form I-687 submitted in 1993 to establish class membership, the applicant indicated that he did not enter the United States until November 1981 and that he worked as a gardener in Pacoima, California for the duration of the requisite period. These inconsistencies cast doubt on whether the applicant has accurately represented his residence in the United States during the requisite period to CIS.

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 evidence that is relevant to his claim of having maintained continuous residence in the United States for the duration of the requisite period:

1. An affidavit from [REDACTED] that was notarized on June 26, 1993. The affiant submitted a California Identification Card that was issued to him on January 25, 1988 with his affidavit. The affiant states that he personally knows that the applicant resided in Pacoima, California from November 1981 until the date he submitted his affidavit. He states that the applicant worked for his employer in 1981. However, he fails to indicate the name of this employer. He further states that he and the applicant have visited each other's families since 1981. However, he fails to state the frequency with which he saw the applicant during the requisite period. He indicates that the longest period of time that he has not seen the applicant for is one month. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
2. An affidavit from [REDACTED] that was notarized June 26, 1993. The affiant submitted a California Driver License that was issued to him on March 6, 1987 with his affidavit. It is noted that his name is spelled, "[REDACTED]" on his Driver License. It is also noted that the address on this Driver License is the address the applicant indicated he resided at for the duration of the requisite period on his form I-687. The affiant states that he knows that the applicant has resided in Pacoima, California since February 1981. He goes on to say that he met the applicant at a family reunion and that they have been friends since 1981. He further states that he knows the applicant went to Mexico from July 3 to July 30 in 1987. However, the affiant fails to state the frequency with which he saw the applicant during the requisite period. Though his Driver License issued to him during the requisite period shows that he resided at the address that the applicant indicated he was residing at from 1979 to 1992 on his Form I-687, this affiant does not state that he resides with the applicant in his affidavit. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.
3. A California Identification Card issued to the applicant on February 22, 1980.
4. A California Identification Card issued to the applicant on July 14, 1987.

5. Photocopies of photographs on which the years 1980, 1981, 1982, and 1983 are written. Though these photographs have dates that fall within the requisite period written on them, the AAO cannot determine when or where they are taken. Therefore, they carry minimal weight as proof that the applicant was present in the United States during the requisite period.
6. A card that has the year 1982 written on it. This card bears the company name, "Kaly Investments Co." and the name "[REDACTED]" is written on this card. The applicant has not previously indicated that he is associated with Kaly Investments Co. Though the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements indicates that the applicant has also used the name "[REDACTED]", his Form I-687 submitted to establish class membership in 1993 stated that he had never used any other names.
7. Forms 540A and 1040A for 1981 that are not signed and bear a stamp showing the name "Kaly Investments Co." These unsigned forms bears the name "[REDACTED]" who resides at "[REDACTED]" in Sun Valley. It is noted that this is not an address that the applicant indicated he resided at on his Forms I-687. Part #8 for the Form 540A shows that "[REDACTED]" has one child named "[REDACTED]" and part #5c of the Form 1040A shows that two dependent children, named "[REDACTED]" and "[REDACTED]" who resided with him. It is noted that at the time of the applicant's interview with a CIS officer pursuant to this Form I-687 application on October 16, 2006, the applicant indicated that he did not have any children. Because these forms are not signed, because they shows a name that is not the applicant's name and an address that the applicant did not indicate he resided at and because they show that "[REDACTED]" has children when the applicant has not indicated that he has any children, doubt is cast on the credibility of these documents as evidence that the applicant resided in the United States during the requisite period.
8. An affidavit from "[REDACTED]" that was notarized on September 23, 2006. The declarant submitted photocopies of his California Driver License issued to him in 2003 and his Permanent Resident Card as proof of his identity. The declarant states that he knows that the applicant has been present in the United States since 1986. He states that he met the applicant through a mutual friend named "[REDACTED]". However, he does not indicate where he met the applicant or whether he first met him in the United States. Though he speaks of the applicant's moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that time when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
9. An affidavit from "[REDACTED]" that was notarized on September 16, 2006. The affiant submits his current California Identification Card and his Permanent Resident Card with his affidavit. It is noted that the record also contains this affiant's 1988 Identification

Card as previously noted. The affiant states that he knows the applicant has been present in the United States since 1979. It is noted that this affiant previously stated in his 1993 affidavit that he knew that the applicant had been present in the United States since 1981. He states that he met the applicant through [REDACTED], the affiant's cousin. He states that the applicant was his cousin's roommate. Though he speaks of the applicant's moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that time when he did not see the applicant. Because this declaration is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

10. **An affidavit from [REDACTED]** that was notarized on September 18, 2006. The affiant submits his Certificate of Naturalization issued on June 14, 2000 and his California Driver License issued in 2003 with his affidavit. The affiant states that he knows the applicant has been present in the United States since 1979. He states that the applicant is his cousin and that they grew up together. He states that when the applicant arrived in the United States he offered his home to the applicant but he refused the offer because he was already residing with a friend. Though he speaks of the applicant's moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that time when he did not see the applicant. Because this declaration is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
11. **An affidavit from [REDACTED]** that was notarized on October 13, 2006. The affiant submits a photocopy of his California Senior Citizen Identification Card and his Permanent Resident Card with his affidavit. The affiant states that he has known the applicant since 1979. He states that he met the applicant at work and that they lived near each other. However, he fails to indicate where he first met the applicant or whether he first met him in the United States. Though he speaks of the applicant's moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that time when he did not see the applicant. Because this declaration is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
12. **An affidavit from [REDACTED]** that was notarized on October 13, 2006. The affiant submits a photocopy of her California Senior Citizen Identification Card and a photocopy of her Permanent Resident Card with her affidavit. The affiant states that she has known the applicant in the United States since 1979. She states that the affiant is her cousin and that he contacted her when he arrived. Though she speaks of the applicant's moral character, she does not indicate the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time during that time when she did not see the

applicant. Because this declaration is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

13. An affidavit from [REDACTED] that was notarized on October 13, 2006. The affiant submitted a photocopy of his Permanent Resident Card with this affidavit. It is noted that the record also contains a photocopy of his California Driver License from 1987. The affiant states that he has known the applicant since 1979. He goes on to say that the applicant is his wife's cousin. He states that the applicant resided with him when he arrived in the United States. It is noted that the affiant's previously noted 1987 Driver License bears the address that the applicant indicated he resided at during the requisite period. It is noted that the affidavit this affiant submitted in 1993 indicates that he knew the applicant began residing in the United States in February 1981 rather than in 1979. This inconsistency casts doubt on assertions made by this affiant regarding the date that he first met the applicant.

It is noted that the applicant has submitted documents as proof of his residence after the requisite period. The issue in this proceeding is whether the applicant submitted sufficient evidence to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period. 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 December 15, 2006. In her decision, the director noted discrepancies between the tax documents the applicant submitted as evidence and other evidence in the record. The director went on to say that the affidavits submitted by the applicant fail to provide specific details regarding the events and circumstances of the applicant's residence in the United States during the requisite period. She further stated that affiants from whom the applicant submitted affidavits did not submit evidence that they were present in the United States during the requisite period. However, it is noted that affiant [REDACTED] submitted a California Identification Card that was issued to him in 1988 with his 1993 affidavit and affiant [REDACTED] submitted his California Driver License issued to him in 1987 with his 1993 affidavit. However, it is also noted that both of these affiants claimed both to have first met the applicant in 1981 in their affidavits that were notarized in 1993 but claimed to have first met him in 1979 in their affidavits that were notarized in 2006.

On appeal, the applicant states that he has resided in the United States since 1979. He states that because he was nervous at the time of his interview he confused dates. He submits the following additional evidence in support of his application:

- A print-out that was stamped by the Social Security Administration District Office on January 3, 2007. This print-out indicates that the applicant, using the name Inocente [REDACTED] had earnings in the United States in 1981 and in 1989. His earnings in 1981 were 3283.00 and his earnings in 1989 were 2271.00. This document shows that the last four numbers of the applicant's Social Security Number are [REDACTED]. Though this

print-out shows that the applicant worked in the United States for part or all of 1981, it does not show that he worked for any other years during the requisite period. Therefore, this print-out carries no weight in establishing that the applicant was employed or resided in the United States from 1982 until the end of the requisite period.

- **A photocopy of a W-2 issued to [REDACTED] in 1989.** This W-2 form shows that [REDACTED] resided at [REDACTED]. It is noted that though the applicant indicated that he resided at this address on his Form I-687, he stated that this residence at this address began in 1993. The last four numbers of the Social Security Number associated with [REDACTED] are [REDACTED]. It is noted that this is not consistent with the Social Security Number used by [REDACTED]. Further, as this document pertains to 1989, which is after the requisite period ended, it carries no weight as evidence that the applicant resided in the United States during the requisite period.
- A partial photocopy of a tax form for a year that is not legible. On this form the name is not visible. Therefore, this form cannot clearly be associated with the applicant. Therefore, it carries no weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED] that is dated January 2, 2006. In this declaration, Mr. [REDACTED] states that he has known the applicant since 1981. He goes on to say that they worked together at a company named Original Lamp but that the applicant worked using the name [REDACTED] at that time.

Though the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements in January 2006 indicates that the applicant began residing in the United States in 1979, his Form I-687 submitted to establish class membership in 1993 shows that the applicant first entered the United States in 1981. He submitted affidavits from affiants [REDACTED] and [REDACTED] that are not consistent regarding the date that they first met the applicant. These affiants both stated that they first met the applicant in 1981 when they submitted affidavits in 1993 but they stated that they first met him in 1979 when they submitted affidavits in 2006. He has submitted documents issued to [REDACTED] that he claims are his own. However, the Forms 1040A and 540A issued to [REDACTED] in 1981 show an address of residence associated with [REDACTED] that the applicant has never stated he resided at. These forms also show that [REDACTED] had two children when the applicant claims not to have any children. Though the applicant indicated that he had used the name [REDACTED] when he submitted his Form I-687 in 2006 pursuant to the CSS/Newman Settlement Agreements, he did not indicate he had ever used this name when he submitted his Form I-687 to establish class membership in 1993. The applicant was also not consistent in his two Forms I-687 when he showed his employment in the United States, stating that he worked as a gardener for [REDACTED] on his Form I-687 that he submitted in 1993 and then stating that he worked both performing shipping and receiving and as a machine operator for Original Lamp and Valco respectively on his Form I-687 submitted in 2006 pursuant to the CSS/Newman Settlement

Agreements. These discrepancies cast doubt on the applicant's claims to have resided in the United States for the duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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.