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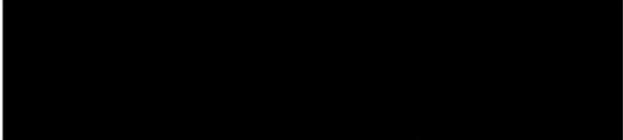
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-253-14880

Office: LOS ANGELES

Date: JUN 09 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 there were discrepancies in the record regarding when the applicant attempted to apply for legalization during the original filing period. She went on to say that declarant [REDACTED] was contacted and, through the use of an interpreter, was not able to verify that the applicant resided in the United States during the requisite period. The director found these discrepancies caused the applicant to fail to meet his burden of proving that he continuously resided in the United States for the duration of the requisite period. Because of this, the director found the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Therefore, she denied his application.

On appeal, the applicant asserts that though affiant [REDACTED] was contacted, he does not speak English. He further states that the applicant is known by his friends as [REDACTED] or [REDACTED] rather than by his true name. He asserts that this caused confusion during this affiant's conversation with the Citizenship and Immigration Services (CIS) officer. He goes on to state that a declaration from his brother contained typographical errors which caused confusion regarding the date he attempted to apply for legalization during the original filing period. He further submits updated telephone numbers for affiants from whom he submitted affidavits.

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 petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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 June 10, 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 Los Angeles, California from 1981 until 1982; [REDACTED] in North Hollywood, California from 1982 to 1986; and [REDACTED]

██████████ in North Hollywood, California from 1986 to 1989. 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 when he traveled to and from Mexico to see family in November 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 by Fine Builder's Company as a laborer from 1982 to 1985; and at H and S Concrete from 1985 until 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 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 submitted the following as evidence that he resided in the United States for the requisite period:

Contemporaneous evidence:

- A receipt for payment of a California Gas bill by the applicant that is dated May 27, 1986.
- A California Driver's License issued to the applicant on August 21, 1986.
- A utility bill issued to the applicant whose name is listed as '██████████' on June 24, 1986.
- An Identity Card from the Van Nuys Community Adult School showing that the applicant, whose name is listed as '██████████' attended this school from 1983 to 1984. The applicant's address on this card is consistent with the address of residence he showed on his Form I-687 during 1983 and 1984.
- Photocopies of Money Orders bearing the name "██████████" and the applicant's name. However, the dates on these money orders are not legible. Therefore the AAO cannot determine whether they are relevant evidence for this proceeding.

Affidavits:

- A declaration from [REDACTED] a that is dated May 9, 2005. In this declaration, [REDACTED] states that he is the applicant's brother. He states that he knows the applicant arrived in the United States in 1981. He asserts that when the applicant arrived in the United States, he was residing in California. He states that on or about September of 1987 he went with his brother to apply for amnesty in North Hills, California. He goes on to say that the applicant was not able to apply at that time because he had been outside of the United States previously. It is noted here that the applicant's Form I-687 shows his only absence from the United States was in November 1987, after this declarant states the applicant attempted to apply for legalization. However, it is further noted that the affiant has stated that the applicant applied "on or about" September 1987. Considering the passage of time, it is reasonable that this affiant might not remember the month that he accompanied his brother to an immigration office approximately 20 years previously.
- A declaration from [REDACTED] that is dated May 9, 2005. Here, [REDACTED] states that the applicant worked for his company, H and S Concrete from 1985 to 1989. [REDACTED] submitted a photocopy of the applicant's W-2 statement from 1987 with his affidavit. This W-2 Form shows the applicant's name as being associated with H & S Concrete. It is noted that the employer's name is listed as "[REDACTED]" rather than [REDACTED]. It is further noted that the applicant's address on this W-2 Form is [REDACTED]
- A declaration from [REDACTED] that is dated May 9, 2005. Here, the declarant states the applicant and his or her family rented out his or her home from 1986 until 1989. Though this declarant states that the applicant rented out his or her home, the declarant does not provide evidence of ownership of this residence.
- A declaration from [REDACTED] that is dated May 19, 2005. The declarant states he knows the applicant resided in the United States from January 1988 until the present. Though not required to do so, he provides a photocopy of his California Driver's License as proof of his identity.
- A declaration from [REDACTED] that is dated May 19, 2005. Here, the declarant states that she personally knows that the applicant resided in the United States from 1983 until the end of the requisite period. Though not required to do so, she provides a photocopy of her California Driver's License with her affidavit.
- A declaration from [REDACTED] that is dated May 19, 2005. In this letter, the declarant states that he employed the applicant in his company, Fine Builders, from 1982 until 1985. Though not required to do so, he submits a photocopy of his resident alien card and a photocopy of his driver's license as proof of his identity. Here, he fails to indicate how he knows the applicant's start date working for his company. He further fails to

submit proof that he owned this company or that he resided in the United States during the requisite period.

- A declaration from [REDACTED] that is dated May 12, 2005. The declarant states that the applicant resided in the United States from 1983 until the end of the requisite period at addresses that are consistent with what the applicant showed on his Form I-687. He provides a telephone number at which he can be reached to verify information in his declaration.
- An affidavit from [REDACTED] that is dated May 9, 2005. In this letter, Mr. [REDACTED] states that he personally knows that the applicant resided in the United States from 1981 until the present. He states that he met the applicant, who he refers to as [REDACTED], when he lived in his home from 1981 until the end of 1983. He states that the applicant then moved to his brother's house in North Hollywood. Though not required to do so, this declarant submitted a photocopy of his driver's license with his declaration. This driver's license showed an address that is consistent with the address the applicant showed he resided at from 1981 to 1983 on his Form I-687.

A declaration from the applicant that is dated June 6, 2005. In this declaration, the applicant states he entered the United States in 1981. He states that he immediately began residing with his brother when he arrived. He asserts that he visited his mother in Mexico in November 1987. He states that after he returned from that absence he learned about the amnesty program. He goes on to say that he went to the immigration office in Wilshire Blvd. in Los Angeles, California where he attempted to apply for amnesty. It is noted that the applicant's brother's declaration indicates that the applicant attempted to apply for amnesty in September in North Hills, California. It is also noted that though this affidavit states that the applicant immediately began residing with his brother after entering the United States, the notarized declaration from [REDACTED] that is dated May 9, 2005 shows that the applicant resided with [REDACTED] from 1981 to 1983, after which time he began residing with his brother. These inconsistencies cast doubt on the applicant's claim of having resided continuously in the United States for the duration of the requisite period.

The director denied the application for temporary residence on August 21, 2006. In denying the application, the director noted the above and stated that there were discrepancies between the applicant's brother's testimony in his May 9, 2005 declaration and the applicant's testimony regarding his attempts to apply for legalization during the original filing period. The director also noted that her office was only able to contact one affiant from whom the applicant had submitted a declaration or affidavit. She stated that this affiant, [REDACTED] only verified the applicant's presence in the United States for 12 to 13 years. It is noted here that Mr. [REDACTED] stated in his May 9, 2005 declaration that the applicant resided with him from 1981 until 1983.

On appeal, the applicant's preparer submits a letter and the applicant submits additional evidence. Details of the documents submitted by the applicant for the first time with his appeal are as follows:

- A declaration from [REDACTED] that is dated September 12, 2006. In this letter, Ms. [REDACTED] states that she would like to correct errors in the applicant's previously submitted Form I-687 and declarations he submitted in support of that application. In this statement, she asserts that she wishes to clarify that the applicant traveled in November rather than in September 1987; that inquiries were conducted in an office in the North Hills and that [REDACTED] took the applicant to apply for legalization on Wilshire Avenue. It is noted here that there is no further explanation as to what inquiries are being referred to in this letter.
- A declaration from the applicant that is dated September 14, 2006. In this declaration, the applicant responds to the director's assertion that the testimony from [REDACTED] was not verified when the director's office called that affiant. Here, the applicant states that [REDACTED] does not speak English and that further, the applicant is known as "[REDACTED]" or "[REDACTED]" rather than by his true name by this affiant. He asserts that there were typos made by [REDACTED] of Hermandad Mexicana in the letter from his brother. However, it is noted here that the applicant's brother signed this statement before it was submitted and presumably, this statement contained testimony provided by the applicant's brother rather than from [REDACTED].
- A declaration from [REDACTED] that is dated September 15, 2006. In this letter, the declarant states he has known the applicant since 1981. He states he met him through [REDACTED]. Though not required to do so, he submits a photocopy of his California Driver's License with his letter.
- A declaration from [REDACTED] that is dated September 15, 2006. In this letter, the declarant states he has known the applicant since the middle of 1982. However, here, he does not state that he knows the applicant resided in the United States at that time. Though not required to do so, he provides a photocopy of his California Driver's License with his affidavit.

In summary, the applicant has provided information regarding his first residence in the United States being both with [REDACTED] and with his brother. He has submitted contemporaneous documentation with various addresses on [REDACTED] when he states he only resided at one address on that street. The one affiant who CIS successfully contacted could not verify that the applicant resided in the United States during the requisite period. This is significant because his affidavit that he submitted the prior year indicates that the applicant resided with him from 1981 until the end of 1983. The applicant has submitted contemporaneous evidence of his residence in the United States beginning in 1983 that appears mostly consistent. Considering the passage of time, it would be reasonable that the applicant's

brother could have made an error regarding the month that the applicant attempted to apply for legalization. It is noted that his declaration stated that he took the applicant to apply for legalization "on or about" September 1987. It also appears that the applicant and his brother have both gone to various immigration offices during and subsequent to the requisite period. Therefore, considering the passage of time, it is reasonable that there may have been confusion regarding which office the applicant went to in 1987. However, the inconsistencies regarding the applicant's residence in the United States from 1981 to 1983 are significant.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim of having resided in the United States for the duration of the requisite period. 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 regarding the applicant's residence in 1981 and 1982, 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 duration of 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.