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U.S. Citizenship
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Services

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FILE:



Office: NEWARK

Date: JUN 09 2008

MSC 05 018 10036

IN RE: Applicant:



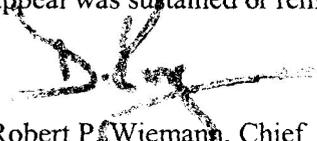
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:



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, Newark, New Jersey. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, the applicant appeared to assert that the evidence provided is sufficient to demonstrate his eligibility. The applicant has also asserted that CIS had provided him inadequate notice, but without specifying what he was provided inadequate notice of.

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 Immigration and Nationality Act (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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The Form I-687 application was submitted on October 18, 2004. On it, he stated that he last entered the United States on June 3, 1981.

On the applicant’s class membership affidavit, which he signed on July 20, 1990, the applicant stated that he first entered the United States on May 29, 1981. On a previous class membership determination form that the applicant signed on March 6, 1990, however, he stated that he first entered the United States on November 6, 1980.

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

On the application the applicant was asked to list all of the jobs he has held since January 1, 1982. The applicant stated that he had worked (1) as a driver for Pronto Delivery in Elizabeth, New Jersey from May 1985 to August 1990, (2) as a packer for Rosen Toy Company in Carteret, New Jersey

from June 1981 to February 1985, (3) as a truck driver for Direct R [sic] Service¹ in Newark, New Jersey from 1989 to 1991, and (4) as self-employed truck driver since 1991.

On the application the applicant was asked to list all of his residences in the United States since his first entry. In response, the applicant stated that he had lived (1) at [REDACTED] in Newark, New Jersey from June 1981 to July 1981, (2) at [REDACTED] in Linden, New Jersey from July 1981 to April 1987, (3) at [REDACTED] in Sunnyside, New York from April 1987 to December 1988, (4) at [REDACTED] in Elizabeth, New Jersey from December 1988 to June 1989, (5) at [REDACTED] in Elizabeth, New Jersey from June 1989 to November 1990, (6) at [REDACTED] in Linden, New Jersey from November 1990 to 1994, and at [REDACTED] in Linden, New Jersey, since 1994.

The record contains:

- A letter from the owners of a fund transmittal service in Elizabeth, New Jersey. That letter purports to have been signed on March 9, 2006 and notarized on March 10, 2006. This office notes that for a notary to attest to a signature placed on a document on a preceding day is, at the very least, irregular. The notary public who subscribed that letter, however, neither attested to the affiants' signatures nor indicated that they had sworn to or affirmed the contents of the letter. In that letter the affiants state that they knew the applicant in Columbia and met him again in the United States during 1981. Although they state that he was their client and attended their July 4 barbecue every year they do not otherwise state how often they were in touch with him during the period of requisite residence in the United States. The applicant's name is misspelled throughout that letter.
- An affidavit from [REDACTED] of Roselle, New Jersey, dated March 10, 2006. In his affidavit [REDACTED] stated that he has known the applicant since 1982, but does not state whether the applicant had then entered the United States. He further stated that they have worked together since 1985, for Direct Air Service in Newark, New Jersey, but did not indicate how often they were in contact during the requisite period. The applicant's name is misspelled throughout that letter.
- A notarized letter dated August 22, 2005, from [REDACTED], president of Direct Air Service, Incorporated of Newark, New Jersey, states that he has "had a working relationship and friendship [with the applicant] for approximately 20 years" and that the applicant has been a contract driver for his company for 16 years. The applicant's name is misspelled throughout that letter.
- An undated letter from [REDACTED] of Providence, Rhode Island. Ms. [REDACTED] claimed to have met the applicant during the summer of 1981 and to have been in touch with him since then. She claims to have seen the applicant on holidays and at birthday parties, but

¹ This office notes that, according to an August 22, 2005 letter in the record from the president of the company, the name of that company is Direct Air Service.

did not otherwise state how often she saw him. A notary applied his seal to that letter and indicated that his commission would expire on September 15, 2006, but did not give the date when he subscribed that document. He also did not attest to [REDACTED]'s signature or indicate that she had sworn to or affirmed the contents of the letter. The applicant's name is misspelled throughout that letter.

- An undated letter from [REDACTED]. That letter states that [REDACTED] attests to essentially the same facts as the letter from [REDACTED] that is, that the signor met the applicant during the summer of 1981, that he then lived in Elmhurst, New York, that they have been in touch since, and that he sees the applicant on holidays and at birthday parties, but without stating more specifically how often he sees the applicant. [REDACTED] who provided her own letter, described above, placed a notary seal on [REDACTED]'s letter, signed it, and indicated that her commission would expire on June 5, 2006, but did not indicate when she subscribed that document. She also did not attest to Mr. Fajardo's signature or indicate that he had sworn to or affirmed the contents of that letter. The applicant's name is misspelled throughout that letter.
- An affidavit dated August 8, 2005, also from [REDACTED], giving his address in Providence, Rhode Island. In that affidavit [REDACTED] stated that he met the applicant during June of 1981 on a soccer field, but did not state whether the soccer field was in the United States or provide any additional detail pertinent to the applicant's residence in the United States during the requisite period. Notary public [REDACTED] attested to that affidavit. The applicant's name is misspelled throughout that letter.
- An affidavit from [REDACTED] of Linden, New Jersey. In that affidavit [REDACTED] stated that he met the applicant during 1983, but did not indicate whether that meeting took place in the United States. The applicant's name is misspelled throughout that letter.
- A statement from [REDACTED] of Linden, New Jersey, dated August 6, 2005. In that letter [REDACTED] stated that she first met the applicant during September 1981, but did not describe the nature or frequency of her encounters with the applicant since then. Although that letter contains a notary's form attestation, the date of the attestation was not indicated. Whether the notary wished to attest to the signature on the statement, or to attest that applicant had sworn to its contents, or both, or neither, is unclear. The applicant's name is misspelled throughout that letter.
- An affidavit dated March 13, 2006 from [REDACTED] of Linden, New Jersey. Ms. [REDACTED] stated that she was born in the United States and has known the applicant since 1981.² Ms. [REDACTED] also stated, "[The applicant] . . . was always a part of our family's social gatherings, birthday parties, and holiday dinners." The applicant's name is misspelled throughout that letter.

² Although the affiant did not so state, this office surmises that she is claiming that she met the applicant in the United States during that year.

- An affidavit dated August 18, 2005 from [REDACTED] a. Mr. [REDACTED] states that he has known the applicant since 1982, when they both worked for Rosen Toy Corporation, and that he subsequently recommended him for a job with Pronto Deliveries. The applicant's name is misspelled throughout that letter.
- A notarized letter dated July 7, 1990 from [REDACTED] z, president of Roser Toy Corporation, which has a mailing address in Little Ferry, New Jersey. The body of that letter states, in its entirety, "This is to verify that [the applicant] S.S.# [REDACTED], was our employed, as a packard in our shipping and packing department from June 4, 1981 until February 15, 1985." [Errors in the original.] This office notes that although the company name is spelled "Rosen" elsewhere in the record, it is spelled "Roser" in the letterhead of that document. A search of a website at <https://accessnet.state.nj.us/home.asp> operated by the New Jersey Secretary of State and accessed on May 8, 2008 indicates that a Roser Toy Corporation does, in fact, exist in that state, whereas Rosen Toy Company does not. The applicant's name is misspelled throughout that letter.
- A letter dated June 1, 1990 from the associate pastor of a church in Elizabeth, New Jersey. That letter indicates that the applicant has been a parishioner at that church since 1986.
- An affidavit dated July 7, 1990 from [REDACTED] of Elizabeth, New Jersey. Mr. [REDACTED] claimed to have known the applicant since 1982, but did not state when he first encountered him in the United States, or the nature and frequency of their contacts after that, or provide any other detail. The applicant's name is correctly spelled on that affidavit, but it refers to him as [REDACTED]
- An affidavit dated July 10, 1990 from [REDACTED] b of Los Angeles, California. Mr. [REDACTED] claimed to have known the applicant since 1981, but did not state when he first encountered him in the United States, or the nature and frequency of their contacts after that, or provide any other detail. The applicant's name is correctly spelled on that affidavit, but it refers to him as [REDACTED]
- An affidavit dated July 7, 1990 from [REDACTED] of Elizabeth, New Jersey. Ms. [REDACTED] claimed to have known the applicant since 1981, but did not state when she first encountered him in the United States, or the nature and frequency of their contacts after that, or provide any other detail. The applicant's name is incorrectly spelled on that affidavit, and it refers to him as [REDACTED]
- An affidavit from [REDACTED] of Elizabeth, New Jersey. Although she dated, and presumably signed, that letter July 6, 1990, it was notarized on July 7, 1990. This office reiterates that to notarize a letter on a day other than that on which it was signed is at best irregular. In that letter [REDACTED] stated that she has known the applicant since May 1981, and that, "She [sic] [bought] Popular Club merchandize from me [from] that date until now. She [sic] resided at [REDACTED], Elizabeth [, New Jersey]. This office notes that the

applicant stated that he first entered the United States on May 29, 1981, and that he stated, on the Form I-687 application, that he moved to ██████████ in Elizabeth during June 1989. Where the affiant may have met the applicant during May 1981 is unclear.

- An affidavit from ██████████ dated July 10, 1990. That affidavit states that the applicant lived with the affiant at ██████████ in Linden, New Jersey from July 17, 1981 to April 26, 1987.
- An affidavit from ██████████, vice president of Pronto Delivery Service. This office notes that the affidavit is on plain paper, rather than on letterhead. That affidavit states that the applicant worked for Pronto “from 5/85 – 6/87, working a second shift from 6pm – 1am” and further that, “Since absence he’s been with us from 9/87 till present date.” [Errors in the original.] The precise employment chronology that letter urges is unclear. Although that letter is dated, and was presumably signed, on June 20, 1990, it was notarized on July 7, 1990. Again, that is chronology is irregular.

The record contains no other evidence pertinent to the applicant’s residence in the United States during the salient period. The evidence submitted contains various apparent discrepancies and other suspicious circumstances.

██████████, who provided an address in Linden, New Jersey on the same block as the applicant, stated that the applicant is always present at her family’s holiday dinners, but did not state where they take place. The affidavit of ██████████ indicates that the applicant spends Thanksgiving, Christmas, and New Year’s with him. ██████████ lives in Elmhurst, New York. The affidavit of ██████████ states that the applicant spends Thanksgiving, Christmas, and New Years with her. Ms. ██████████ lives in Providence, Rhode Island, roughly 175 miles from Elmhurst, New York and 200 miles from Linden, New Jersey.

Some of the documents appear to have been notarized on days other than the days on which they were signed by their affiants. On some of the notarized documents presented, the notaries did not explicitly state that they were attesting to the signatures on those documents or that the affiants had sworn to their contents. As such, the significance of the placement of a notary’s stamp on those documents is unclear. Some of the notaries did not date their attestations.

Some of the affidavits and other statements in the record do not explicitly state when the affiants met the applicant in the United States. None make explicit how often the affiants met with the applicant in the United States during the requisite period.

Although the applicant spelled his name ██████████ on the application and elsewhere, the majority of the acquaintance affidavits and employment verification letters spelled his name ██████████. Further, although they claim to have known the applicant for decades, many of the affiants appear to believe that the applicant is a woman. This office notes that photographs in the record demonstrate that the applicant’s appearance is not sexually ambiguous.

The applicant himself has provided two different chronologies of his initial entrance into the United States. On one class membership questionnaire, he stated that he first entered the United States on November 6, 1980. On another, he stated that he first entered the United States on May 29, 1981. The failure of the applicant to provide a single chronology of his entry into the United States is, in itself, suspicious.

The letterhead of the July 7, 1990 employment verification letter in the record indicates that the applicant's ostensible former employer is Roser Toy Corporation, and the office of the New Jersey Secretary of State confirms that company's existence. Other documents in the record, however, incorrectly refer to that company as the Rosen Toy Corporation. The New Jersey Secretary of State did not confirm the existence of that company.

On the Form I-687 application the applicant stated that he worked for the Rosen Toy Corporation from June 1981 to February 1985. In his August 18, 2005 affidavit [REDACTED] stated that he met the applicant when they worked at Rosen Toy Corporation. That two people who worked at that company would be unable to remember its name correctly is unlikely.

Comparison of the July 10, 1990 verification of residence affidavit from [REDACTED] and the employment verification letter that he signed as vice president of Pronto Delivery Service indicates that the same person did, in fact, sign those documents. This is not, in itself, suspicious. No reason exists that the applicant's roommate from 1981 to 1987 might not also be the vice president of the company that employed the applicant from 1985 to 1987. However, as was noted previously, an August 18, 2005 affidavit from [REDACTED] states that he met the applicant in 1982 when they were working for Rosen Toy Corporation, and subsequently recommended him for a job with Pronto Delivery. This office finds suspicious the assertion that the applicant required a coworker recommendation to Pronto Delivery during or after 1982, when he had been living with the vice president of that company since 1981.

Further, the notation "PJK/mak" at the bottom of the Pronto Delivery employment verification letter indicates that someone with the initials M.A.K. produced that letter for the signature of someone with the initials "P.J.K." The record contains no indication of how that letter came to be signed, instead, by [REDACTED]. This discrepancy suggests that the employment verification letter from Pronto Delivery was not produced for [REDACTED]'s signature, and that it may have been otherwise altered.

Again, pursuant to *Matter of Ho*, 19 I&N Dec. 582, doubt cast on the applicant's proof justifies a complete reevaluation of the reliability and sufficiency of all of the applicant's evidence and his assertions, and the perceived discrepancies must be resolved with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice.

In a Notice of Intent to Deny (NOID), dated February 15, 2006, the director pointed out various contradictions between the evidence and assertions the applicant provided in this matter pertinent to his residential history and indicated that the applicant failed to submit evidence sufficient to

demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director also listed factors that render the applicant's qualification for CSS/Newman class membership questionable. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted a brief. In it, he argued that the evidence submitted is sufficient to demonstrate the applicant's eligibility. In the Notice of Decision, dated May 1, 2006, the director denied the application based on the reasons stated in the NOID, that is, that the applicant had failed to demonstrate continuous residence in the United States during the requisite period.³

In an appeal of the decision of denial that the applicant sent to a special master, the applicant argued that he had not been accorded sufficient notice, but did not specify what CIS was obliged to accord him additional notice of.

On July 31, 2007 the National Records Center issued an amendment to the May 1, 2006 decision of denial. The amendment indicated that the decision of denial might be appealed to this office, rather than to a special master.

On appeal to this office, the applicant submitted a brief in which he argued that the evidence is sufficient to show the applicant's eligibility.

This office will first dispose of the applicant's assignment of procedural error, although it was not addressed to this office. The director issued a NOID indicating the bases upon which the application would be denied. After the applicant responded, the director issued a notice of decision. Both of those documents accorded the applicant notice of the grounds upon which the denial would be, and was, based. What other notice the applicant believes he was entitled to is unclear. This office finds that the applicant has not demonstrated that he received insufficient notice.

The remaining issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The record contains no contemporaneous evidence to demonstrate that the applicant was in the United States at any time during the requisite period, from let alone that he resided in the United States continuously during that period. The evidence consists of affidavits and other statements from the applicant's alleged previous employers and acquaintances. Those affidavits and other statements lack specificity, and they are largely discredited by various contradictions and suspicious circumstances noted above that the applicant has not addressed.

³ The decision of denial also seemed to imply that the applicant had failed to demonstrate membership in the CSS/Newman class. This office notes, however, that the director issued a decision on the merits, thus treating the applicant as a class member. This office will address the decision on the merits, and not class membership.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 paucity of credible supporting documentation he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.