

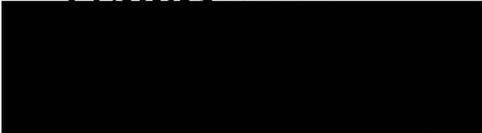
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U.S. Citizenship  
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FILE: MSC-05-231-10563

Office: LOS ANGELES

Date: JUN 10 2008

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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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, in her Notice of Intent to Deny (NOID) the director stated that the applicant failed to meet his burden of proving that he maintained continuous unlawful residence in the United States for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. In denying the application, the director stated that the applicant's response to her NOID was submitted without supporting documents. She went on to note that the print-out from the Social Security Administration and the affidavits submitted by the applicant when considered together were not sufficient to allow the applicant to meet his burden of proof. Therefore, she denied the application.

On appeal, the applicant submits a brief through his attorney. Here, the applicant's attorney argues that the evidence submitted by the applicant, when considered in its entirety does establish that the applicant resided continuously in the United States for the duration of the requisite period.

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 met this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 19, 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 Compton, California from April 1979 to November 1984; and [REDACTED] in Compton from November 1984 to May 1998. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had three absences during the requisite period. Here, he showed he went Mexico to visit family: from September to October in 1984;

from July 1986 until August 1986 because his father passed away; and again to Mexico to help his mother with paperwork from July to August 1987. It is noted here that the applicant showed that his father passed away on his Form I-687 but the CIS officer who interviewed the applicant changed this entry to read "grandfather." It is also noted that this entry originally showed that the applicant was absent from July 1986 until January 1987 but this last date was changed by the officer to August 1986. The record shows that the applicant has consistently stated that his father passed away in 1986. 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 during the requisite period, he was employed: by Rocket Cleaners in Lynwood, California from October 1979 until January 1984; that he was unemployed from February 1984 until August 1985; by Del Amo Cleaners in Lakewood, California from April 1985 until November 1986; by Perales Fruit Sales in Compton from January 1987 until August 1988.

Also in the record is a Form I-687 submitted to establish class membership. The date the applicant showed he signed this Form I-687 was July 10, 1993. At part #21 of this Form I-687 the applicant shows that his father, [REDACTED] passed away in 1986. Here, the applicant lists his addresses of residence and his places of employment consistently with what he showed on his subsequently filed Form I-687. It is noted that one of his three absences listed on this Form I-687 is not consistent with what he showed on his previously filed I-687. Here, the applicant showed he was absent from November 1986 until January 1987 because his father passed away rather than from July to August of 1986. It is again noted that this entry was changed by the CIS officer who interviewed the applicant at the time of his interview. It is also noted that all other documents in the record consistently show this absence was from November 1986 until January 1987.

Further in the record is a letter from the applicant dated July 10, 1993 in which he asks for a CSS Class Membership interview because he was turned away when he attempted to file for class membership because of an absence from June to the first part of August of 1987.

The applicant has the burden of proving by a preponderance of the evidence that he 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 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 in support of his application that are relevant to the requisite period:

Documents relevant to before January 1, 1982:

- A W-2 form issued to the applicant showing he worked for [REDACTED] and [REDACTED] in 1981. It is noted that the applicant has indicated that the [REDACTED]'s owned Rocket Cleaners and that this is consistent with the employment the applicant showed he had in 1981 on his Form I-687.
- A Form 1040A for the year 1981 filed by the applicant in 1982.
- An affidavit from [REDACTED] that was notarized on July 14, 1993. Here, the affiant, who claims to reside at [REDACTED] states that he met the applicant when he moved into his neighborhood in April 1979. It is noted that the applicant showed he resided at [REDACTED] since prior to January 1, 1982. He goes on to say that the longest period of time he has not seen the applicant is one and a half months. Though he did not submit an identity document, he did provide his California Driver's License number with this affidavit.
- An affidavit from [REDACTED] that was notarized on July 14, 1993. Here, the affiant states that he is from the same hometown as the applicant. The affiant goes on to say that he saw the applicant when the applicant arrived in the United States in 1979. He states that the longest period of time that he has not seen the applicant for is one month. He states that he personally knows that the applicant resided in the United States in Compton from April 1979 until the date he signed his Form I-687. Though he does not submit identity documents, he does submit his California Driver's License number with his affidavit.
- An affidavit from [REDACTED] that was notarized on July 14, 1993. Here, the affiant states that he met the applicant when he applied for work at the establishment where the applicant was working, to wit, he states that he met the applicant in February 1980. He states that the longest period of time he has not seen the applicant for is one month. Though he does not submit identity documents with his affidavit, he does submit his alien number.
- An affidavit from [REDACTED] that was notarized on July 13, 1993. In this affidavit, the affiant states that he is from the applicant's hometown. He goes on to say that the applicant came to visit the affiant when the applicant arrived in April 1979. He states that the longest period of time that he has not seen the applicant for is one and a half months. Though he did not provide identity documents with his affidavit, he did provide his alien number.
- An affidavit from [REDACTED] that was notarized on July 13, 1993. In this affidavit, the affiant, who met the applicant in Mexico, states that he met the applicant in the United States in June 1980, when the affiant first arrived. He states that the longest period of time

he has not seen the applicant for is one and a half months. Though he did not provide identity documents with his affidavit, he submitted his California Driver's License Number.

- An affidavit from [REDACTED] that was notarized on July 10, 1993. In this affidavit, the affiant states that the applicant is a friend of his brother's. He states that he met the applicant again in the United States when he arrived in November 1981. Though he did not submit identity documents with his affidavit, he submitted his California Identification Card number.
- An affidavit from [REDACTED] that was notarized on July 3, 1993. In this affidavit, the affiant states that he met the applicant when he became his neighbor in August 1980. He states that the longest period of time that he has not seen the applicant for is one and a half months. Though he did not submit identity documents with his affidavit, he submitted his California Identification Card number.
- An affidavit from [REDACTED] that was notarized on July 3, 1993. In this affidavit, the affiant states that he was a childhood friend of the applicant's. He goes on to say that the applicant came to visit him when he arrived in the United States in April 1979. He states that the longest period of time he has not seen the applicant for is one and a half months. Though he did not provide identity documents with his affidavit, he submitted his California Driver's License Number.
- An affidavit from [REDACTED] that was notarized on July 2, 1993. In this affidavit, the affiant states that he was friends with the applicant in Mexico. He goes on to say that the applicant came to visit him when he arrived in the United States in 1979. He states that the longest period of time he has not seen the applicant for is one and a half months. Though he did not provide identity documents with his affidavit, he submitted his California Driver's License Number.
- An affidavit from [REDACTED] that was notarized on July 2, 1993. In this affidavit, the affiant states that he was a childhood friend of the applicant's. He goes on to say that the applicant resided with him from April 1979 until November 1984. He states that the longest period of time he has not seen the applicant for is one and a half months. Though he did not submit identity documents with his affidavit, he submitted his California Identification Card number.

Documents relevant to 1982:

- A Form 1040A for 1982 that shows the applicant's name and an address consistent with where he showed he resided in 1982 on his Form I-687.

Documents relevant to 1983:

- A W-2 form showing that the applicant worked for [REDACTED] and [REDACTED] in 1983. It is noted that the applicant showed that [REDACTED] and [REDACTED] owned Rocket Cleaners and that this is where he was employed in 1983 on his Form I-687
- A Form 1040A for 1983 that shows the applicant's name and residence in the United States that is consistent with where he showed he resided in 1986 on his Form I-687.

Documents relevant to 1984:

- Though the applicant did not submit a W-2 Form or a Form 1040 for this year, he indicated that he was unemployed during this year on his Form I-687.
- It is noted that the previously noted affidavits that state the applicant resided continuously from before January 1, 1982 until the affiants signed their affidavits in 1993.

Documents relevant to 1985:

- An affidavit from [REDACTED] that was notarized on July 13, 1993. Here, the affiant states that he met the applicant in January 1985 when the affiant arrived in the United States. The affiant states that he is the applicant's nephew. He states that the longest period of time he has not seen the applicant is one and a half months.
- A W-2 form showing the applicant was employed by Del Amo Cleaners in 1985.
- A Form 1040A for 1985 that shows the applicant's name and an address that is consistent with where he showed he resided in 1985 on his Form I-687.

Documents relevant to 1986:

- A W-2 form showing the applicant was employed by Del Amo Cleaners in 1986.
- A Form 1040A for 1986 that shows the applicant's name and an address consistent with where he showed he resided in 1986 on his Form I-687.
- An affidavit from [REDACTED] that was notarized on July 2, 1993. In this affidavit, Mr. [REDACTED] states that he drove his personal vehicle to take the applicant to the bus station in Tijuana, Baja California, Mexico in November 1986 for the funeral of his father. He states the applicant returned in early January 1987. He goes on to say that he took the applicant to Tijuana again in July 1987 to help his mother and then returned in early August 1987. He states that he saw the applicant in August 1987.

Documents relevant to 1987:

- An Affidavit of Employment submitted by [REDACTED] that was notarized on August 12, 1993. In this affidavit, [REDACTED] states that she employed the applicant as a stocker and salesperson selling fruit at farmer's markets from January 1987 until June 1987 and then from August 1987 until August 1988. She states that the applicant returned to Mexico during his break in employment to help his mother who had recently been widowed. She states that the applicant was paid in cash by her during his time of employment.

Documents relevant to 1988:

- A W-2 for showing that the applicant was employed by Del Amo Cleaners in 1988.

The director issued a Notice of Intent to Deny (NOID) the applicant on January 27, 2006. In this NOID, the director stated that at the conclusion of the applicant's October 24, 2005 interview he was given an I-72 requesting him to provide a statement from the Social Security Administration listing the years he had worked. She stated that she afforded him 30 days within which to submit these documents. She stated that the documents in the applicant's record were not sufficient to establish that he resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence. The director granted the applicant an additional 30 days within which to submit additional evidence in support of his application.

The record shows that in response to the director's NOID, the applicant submitted a brief through his attorney. In this brief, the applicant's attorney asserts that the applicant did submit additional information in response to the director's I-72 request for information timely on November 22, 2005. The applicant attorney goes on to say that this new information included a Social Security Statement, a Medical Examination Form and tax documents from 2004, all requested by CIS. The applicant's attorney emphasizes that the applicant's Social Security Statement was received by CIS on November 22, 2005.

Here, the record shows the applicant submitted a Social Security Statement stamped by the Social Security Administration Field Office #434 on October 24, 2005. This statement shows the applicant worked in for all years of the requisite period except for 1984 and 1987. Here, the AAO notes that the applicant indicated that he was unemployed in 1984 and that the applicant showed on both Forms I-687 and then submitted an affidavit from his employer showing he was working at a farmer's market and paid in cash in 1987. Here, the AAO further notes that all earnings shown on this statement are consistent with the earnings shown on the applicant's previously submitted W-2 Forms and Forms 1040.

The director denied the applicant on September 26, 2006. In doing so, she stated that the evidence submitted by the applicant was not sufficient for him to meet his burden of proving that he resided in the United States by a preponderance of the evidence. Here, the director noted each of the documents the applicant submitted including the submission in response to her Form I-72. Though

the director did not note why they were lacking, she listed each of the affidavits submitted by the applicant.

On appeal, the applicant's attorney asserts that, contrary to the director's statement in her denial of the application, the applicant submitted copious documentation establishing that he resided continuously in the United States for the duration of the requisite period. Here, she refers to the tax returns, affidavits and employment letters that were relevant to the requisite period. She also refers to the additional information, including the Social Security Statement submitted by the applicant on November 22, 2005. She asserts that the applicant has submitted documents that cover the entire requisite period. She requests a review of the record.

The contemporaneous documents submitted by the applicant appear to be credible. The affidavits submitted by the applicant appear to be credible and amenable to verification in that each includes a contact address. Though the applicant does not have a W-2 form for the years 1984 and 1987, this is consistent with what he showed on both of his Forms I-687 and with other documents in the record. Here, the record shows that the applicant was unemployed in 1984 and that he was employed by an individual who paid him in cash in 1987. The document from the Social Security Administration shows earnings that are consistent with the applicant's submitted W-2 Forms and Forms 1040.

The director has not established: that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date through the date that he was dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

**ORDER:** The applicant's appeal will be sustained. The director shall continue the adjudication of the application for Temporary Resident Status.