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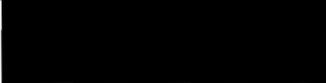
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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FILE:



Office: LOS ANGELES

Date:

MAR 11 2006

MSC-05-230-12454

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 was appealed to the Administrative Appeals Office (AAO). The AAO summarily dismissed the appeal because the applicant had indicated that he would submit a brief in support of his appeal within 30 days, and the brief was not timely received. The record indicates that the applicant's brief was actually timely filed. Therefore, the AAO has reopened the case. The decision is now before the 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. The director specifically identified contradictions between the application for temporary resident status and other applications submitted by the applicant.

On appeal, the applicant stated that he was the victim of an unscrupulous immigration provider. He stated that his Form I-589 and his Form EOIR-42B were prepared under the assistance of this attorney. The applicant stated that the attorney told him to indicate that he first arrived in the United States on January 2, 1988 so that the ten years needed for cancellation of removal would apply to the applicant's case. The applicant also stated that he has met his burden of proving by a preponderance of the evidence that he resided in the United States during the requisite period. The applicant attached a new version of an attestation he had already submitted, containing a correction of a typographical error that had appeared in the original attestation. The applicant also attached evidence indicating that one of his affiants resided in the United States during the requisite period.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the applicant in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to provide an affidavit setting forth the agreement entered into with counsel, evidence that counsel was informed of the allegations and provided with an opportunity to respond, or evidence that a

complaint was filed with disciplinary authorities. Therefore, the applicant is determined not to have established a claim of ineffective assistance of counsel in this instance.

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)(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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 18, 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 listed the following address during the requisite period: [REDACTED] La Puente, California from January 1981 to May 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed absences at the following times during the requisite period, each of which was a trip to Mexico for a family emergency: December 1984; June 1987; and December 1987 to January 1988. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Construction for [REDACTED], from March 1981 to April 1984; [REDACTED] from August 1983 to July 1985; construction for [REDACTED] from November 1985 to December 1987; and self-employed construction from January 1988 to present.

The record also includes a Form I-589 Application for Asylum filed by the applicant on January 26, 1998. At part #17e. where applicants were asked for the date of his or her first arrival into the United States, the applicant stated “January 2, 1988.” This statement conflicts with the information on Form I-687, which indicates that the applicant began residing in the United States in January 1981. This information also directly contradicts the applicant’s claim to have resided in the United States throughout the requisite period. Both of these inconsistencies cast serious doubt on the applicant’s claim to meet the residency requirements for temporary resident status.

The record also includes a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, taken on October 31, 1999, which includes statements made by the applicant on that date. According to the sworn statement, the immigration officer taking the statement asked, “Have you ever lived in the United States previously?” The applicant stated, “Yes. 12 years.” It is noted that January 2, 1988 was slightly less than 12 years prior to the date the sworn statement was taken on October 31, 1999. This statement is consistent with the statement included in the Form I-589, which indicated that the applicant first entered the United States on January 2, 1988. The applicant’s sworn statement also conflicts with the information on the applicant’s Form I-687 and with the applicant’s claim to have resided in the United States during the requisite period. These inconsistencies cast serious doubt on the applicant’s claim to meet the residency requirements for temporary resident status.

The record indicates that the applicant also submitted a Form EOIR-42B on October 9, 1998. At part #17 of the form, where applicants were asked to list, with the exception of listed absences, the date since which they have resided in the United States, the applicant stated January 2, 1988. This is inconsistent with the information on the applicant's Form I-687 and with the applicant's claim to have resided in the United States during the requisite period. These inconsistencies cast serious doubt on the applicant's claim to meet the residency requirements for temporary resident status.

The record includes a report of a psychological evaluation of the applicant and his family members conducted by [REDACTED] on May 31, 2003. The report indicates that the applicant informed [REDACTED] that he left Mexico to come to the United States in 1988. This information contradicts the applicant's statements on his Form I-687 and with the applicant's claim to have resided in the United States during the requisite period. These inconsistencies cast serious doubt on the applicant's claim to meet the residency requirements for temporary resident status. The applicant's statements on his Form I-589, Form EOIR-42B, sworn statement, and psychological evaluation all tend to show he did not enter the United States until January 2, 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Several contemporaneous documents fail to list the applicant's address and, as a result, do not confirm that the applicant resided in the United States during the requisite period. These include receipt for video head cleaners dated May 22, 1987; a payment stub from Travelers Express Company, Inc. dated May 16, 1983; an invoice from Reddi Rooter dated May 7, 1986; a statement of earnings for the period from February 23, 1984 to February 29, 1984; and receipts from unnamed companies dated April 1, 1983, December 7, 1981, and December 14, 1984. The applicant also provided two attestations from [REDACTED] that fail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit dated May 2, 2005 from [REDACTED] stating that the affiant served as interpreter when the applicant submitted his completed Form I-687 application. She stated that the applicant lived continuously in the United States since January 1981. The affiant stated that she and the applicant "have been close friends since all our life [sic] and . . . practically we grew up together for our families his and mine have been very close friends since 1981 here in the United States." This affidavit appears to be internally inconsistent because the record indicates the applicant was approximately 16 years old in 1981, and the affidavit states that she and the applicant practically grew up together because their families have been friends since 1981. Since the applicant was approximately 16 years old when his family became friends with the applicant's family, it is unclear why the affiant would indicate that she "practically grew up" with the applicant. In addition, the affidavit fails to include details regarding when and where the affiant met the applicant, their frequency of contact during the requisite period, and the applicant's addresses during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], which states that the applicant worked for the affiant in construction work from November 1983 to April 1984 and from March 1981 to October 1982. This information is inconsistent with the applicant's Form I-687, which indicates that the applicant worked for the declarant from March 1981 to April 1984, with no identified gaps. This inconsistency calls into question whether the declarant can actually confirm that the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided two declarations from [REDACTED], pastor of Our Lady of Guadalupe, dated April 1, 2005 and September 10, 2007. In both declarations, [REDACTED] stated that the applicant has been a parishioner of Our Lady of Guadalupe in El Monte, California since 1981. These declarations do not conform to regulatory standards for attestations by churches as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declarations do not state the address where the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to.

The applicant provided two form affidavits from [REDACTED], both dated August 6, 1990. One affidavit states that the applicant lived with the affiant at the [REDACTED] address from January 1981 to May 1988. This affidavit fails to provide detail regarding how and when the applicant and the affiant met and came to be living together; and their frequency of contact during the requisite period. The other affidavit states that, to the affiant's personal knowledge, the applicant has resided in La Puente, California from January 1981 to May 1988. This affidavit fails to state that the applicant and the affiant lived together, or provide detail regarding how and when the applicant and the affiant met; their frequency of contact during the requisite period; and the applicant's address during the requisite period. Both affidavits from [REDACTED] are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] in which the affiant stated that, to her personal knowledge, the applicant resided in La Puente, California from 1981 to 1988. This affidavit also fails to provide detail regarding how the applicant and the affiant met; their frequency of contact during the requisite period; and the applicant's address during the requisite period. As a result, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] in which the affiant stated that, to her personal knowledge, the applicant resided in La Puente, California from 1981 to 1988. This affidavit also fails to provide detail regarding how the applicant and the affiant met; their frequency of contact during the requisite period; and the applicant's address during the requisite period. As a result, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] that states that the applicant worked for Mr. [REDACTED] on construction work from November 1985 to December 1987. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided a copy of a receipt from the purchase of a 19-inch television. The receipt is dated May 7, 1982. The receipt includes the applicant's name, and lists the applicant's address as [REDACTED]. The copy of the receipt is blurred such that it appears as if the date, name, and address listed on the receipt have been eradicated and replaced with the above listed information. This casts some doubt on the authenticity of the document. At most, this receipt constitutes some evidence that the applicant resided in the United States during the period immediately surrounding May 10, 1982.

The applicant provided a receipt from [REDACTED]. The receipt is dated November 17, 1982. The receipt includes the applicant's name, and lists the applicant's address as [REDACTED]. The receipt is blurred such that it appears as if the name and address listed on the receipt have been eradicated and replaced with the above listed information. This casts some doubt on the authenticity of the document. At most, this receipt constitutes some evidence that the applicant resided in the United States during the period immediately surrounding November 17, 1982.

The applicant also provided a copy of a receipt from [REDACTED]'s Service. The receipt lists the applicant's name and the [REDACTED] address. The receipt is dated October 5, 1985. This receipt tends to show that the applicant resided in the United States during the period immediately surrounding October 5, 1985.

The applicant provided stubs for employment with [REDACTED], dated August 1, 1984 and November 7, 1984, together with a stub that is undated. The stubs list the applicant's name. The original listed name appears to be eradicated and the applicant's name appears to have been inserted to replace another name. The stubs fail to list the applicant's address. Therefore, these stubs provide only limited evidence that the applicant was present in the United States during the weeks immediately prior to August 1, 1984 and prior to November 7, 1984.

The applicant also provided a United States income tax return for the year 1988. This document tends to indicate that the applicant worked in the United States for some portion of the year 1988.

The applicant provided a certified mail receipt dated January 5, 1987, which lists the applicant's address as [REDACTED]. This document tends to show that the applicant resided in the United States during the time surrounding January 5, 1987.

The applicant provided a receipt from Electrica Del Centro in Tonalá, Jalisco, Mexico dated June 17, 1987. This receipt lists the applicant's name and does not include his address. This document does not constitute evidence that the applicant resided in the United States during the requisite period.

In denying the application the director noted 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. The director specifically identified contradictions between the application for temporary resident status and other applications submitted by the applicant and found that the documents presented failed to overcome the inconsistencies in the record.

On appeal, the applicant stated that he was the victim of an unscrupulous immigration provider. He stated that his Form I-589 and his Form EOIR-42B were prepared under the assistance of this attorney. As stated above, the applicant has failed to establish a claim of ineffective assistance of counsel.

In summary, the applicant has provided contemporaneous evidence of residence in the United States that fails to confirm that the applicant resided in the United States during the requisite period, and has submitted attestations that fail to confirm that he resided in the United States during the requisite period, are internally inconsistent, are inconsistent with the applicant's statements, lack sufficient detail, or do not conform to regulatory standards. The attestations from [REDACTED] fail to confirm that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] is internally inconsistent and lacks sufficient detail. The declaration from [REDACTED] is inconsistent with the applicant's Form I-687 and does not conform to regulatory standards. The declarations from [REDACTED] do not conform to regulatory standards. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail. The declaration from [REDACTED] does not conform to regulatory standards. The applicant provided limited evidence of residence in the United States during the time immediately surrounding May 7, 1982; November 17, 1982; August 1, 1984; November 7, 1984; October 5, 1985; January 5, 1987; June 17, 1987; and sometime in 1988. Considering that the applicant has contemporaneous evidence of residence in the United States for only a maximum of eight months of the full six to seven years of the requisite period, and considering the limitations of this evidence and the other supporting documents, the evidence provided by the applicant is found to be insufficient to overcome the significant inconsistencies in the record.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to

establish continuous residence in an unlawful status in the United States for the requisite period 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.