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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC-06-095-16722

Office: CHICAGO

Date: **MAR 20 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:



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, Chicago. 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, on January 3, 2006 (together comprising the I-687 Application). 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. He specifically noted that the applicant had submitted affidavits as proof of his continuous residence, but that he “provided no supporting documentation such as photos, letters, paycheck stubs, or rent receipts to support the affidavits.” The director denied the application as 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.

On appeal, the applicant, through counsel, lists each item that was submitted in support of his application and notes that the director, in assessing those documents, failed to describe why each was deficient. He also notes that it would be overly burdensome to expect corroborating evidence such as photos or paycheck stubs to accompany affidavits. He submits several additional statements from the same individuals who had submitted statements previously.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period.

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 AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the director's decision regarding the lack of such "supporting documentation" was erroneous. However, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director's conclusion that the applicant has not established by a preponderance of the evidence that he is eligible for the benefit sought.¹

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period, which, as noted above, is from prior to January 1, 1982 through the date when he was discouraged from filing his I-687 Application, between May 5, 1987 and May 4, 1988. The applicant has provided numerous affidavits for the requisite period and his own testimony in the form of statements and prior applications. The record includes the pending I-687 Application as well as a prior Form I-687, dated May 26, 1992, which was submitted in support of the applicant's class member application in a legalization class-action lawsuit, and a Form I-485, Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, dated January 25, 2002.

The applicant also submitted voluminous evidence in the form of affidavits as well as contemporaneous evidence of employment and residence in the United States since 1988, including his child's birth certificate, pay stubs, letters from employers, a High School Equivalency Certificate, and an Illinois Vehicle Registration Permit. Such evidence, however, is not probative of residence before 1988, and, despite the detailed analysis of this evidence by the director and by the applicant on appeal, will not be considered here. The following evidence relates to the requisite period:

- Two affidavits from [REDACTED], both notarized on May 5, 2006, an "Affidavit of Tennancy" (sic) and a "Residency Affidavit." In the former, she states that she resides at [REDACTED] in Glendale Heights, Illinois, that she has known the applicant since May 1968, and that he was her tenant at [REDACTED] in Addison, from February 1986 to September 1989. In the latter, she again states that she resides at [REDACTED] and that the applicant resided at [REDACTED], California, from December 2, 1981 until February 10, 1986; and that he is her brother. A third statement by [REDACTED] undated and not notarized, is also in the record, confirming that she provided two letters previously and that the applicant lived with her at [REDACTED] as indicated above; she provides a current telephone number.

[REDACTED]'s statements are consistent with information provided by the applicant. On his 1992 Form I-687, the applicant listed [REDACTED] as his sister, born in Mexico on January 9, 1965, residing in Illinois; on his Form I-687 Application and the 1992 Form I-687, he listed the same two addresses from December 1981 to September 1989 as noted by [REDACTED]. Both of the affidavits are on fill-in-the-blank forms with the applicant's name and other information written in the blanks; they, and the letter, lack any details that would lend credibility to the statements. There are no details regarding any direct personal knowledge of the applicant's whereabouts or the circumstances of his entry into the United States in 1981 or his residence in the United States thereafter, other than listing his addresses. They, thus, have minimal weight as evidence of the applicant's residence at the noted addresses during the requisite period.

- Two affidavits from [REDACTED], both notarized on February 28, 1991, an "Affadavit [sic] of Tenancy" and "Letter of Reference." The former indicates the [REDACTED] resides at [REDACTED] in Addison, Illinois, that he has known the applicant since February 1986, and that the applicant was [REDACTED]'s tenant at his current address since September 1989 and his tenant at [REDACTED] in Addison from February 1986 to September 1989. Although the addresses and dates

match the information provided by the applicant and the information provided by the applicant's sister, noted above, again the lack of detail and the duplicate claims that the applicant was the tenant of both of them, calls into question the credibility of both [REDACTED] and [REDACTED]'s statements. The "Letter of Reference" is also a fill-in-the-blank form, lacking any details of a claimed friendship and stating simply that [REDACTED] has known the applicant for five years and that he is a person of good moral character. These documents can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two affidavits from [REDACTED] notarized on May 2, 2006, a "Residency Affidavit" and a letter, both indicating that the applicant is [REDACTED] nephew and was residing at [REDACTED] in Goleta, California, from December 1981 to February 1986. The letter adds that during that time, the applicant was living with [REDACTED]'s brother-in-law, [REDACTED]. A letter from [REDACTED] dated June 13, 2006, "to whom it may concern," is also in the record. It adds that, "we visited him in Santa Barbara, CA when we visited my brother-in-law, [REDACTED]" All three documents include [REDACTED]'s address in California and a telephone number. As with the above forms and letter, the information is generally consistent with information provided by the applicant on his I-687 Application and 1992 Form I-687, but no details are included and there is no indication that [REDACTED] had any direct personal knowledge of the circumstances of the applicant's entry or residence in the United States other than that he visited him on unspecified dates in Santa Barbara. The applicant does not claim to have resided in Santa Barbara. For the reasons noted, these documents have minimal weight as evidence of the applicant's residence in the United States from 1981 to 1986.
- Two affidavits from [REDACTED], both notarized in February 1991; they list his address as [REDACTED] Goleta, California. One is on the same "Residency Affidavit" form as noted above, stating that the applicant resided at that address from December 2, 1981 to February 10, 1986, and that the applicant is the affiant's nephew. The other is a letter repeating the same information but adding that the applicant "was a resident in my home" during the same time period and "[h]e helped with the care of my children and the upkeep of my home." His telephone number is included. As with the above forms and letter, the information is consistent with information provided by the applicant on his I-687 Application and 1992 Form I-687, but no details are included that would lend credibility to his statements. Although he notes that the applicant resided in his house and helped care for his children, he does not indicate any personal knowledge of the applicant's entry into the United States during that time or explain why his then 13-year-old nephew would be working for his family and would not be attending school. The affiant's statements, therefore, have minimal weight as evidence of the applicant's residence in the United States from 1981 to 1986.
- Another duplicate "Residency Affidavit" form, notarized on April 25, 2006, from [REDACTED] who provides her address in Santa Barbara, California. Consistent with information provided by the applicant and other affiants, she confirms that the applicant resided at [REDACTED] in Goleta, California, from December 2, 1981 to February 10, 1986. She adds that the applicant did landscaping for her. As with the other "Residency Affidavits," the use of a form and the absence of details detract from the probative value of the document, and it can be afforded only minimal weight as evidence of the applicant's residence in the United States from 1981 to 1986.

- Another duplicate “Residency Affidavit” form, notarized on April 5, 2006, from [REDACTED] who provides her address in Goleta, California, and describes herself as the applicant’s friend. Consistent with information provided by the applicant and other affiants, she confirms that the applicant resided at [REDACTED] in Goleta, California, from December 2, 1981 to February 10, 1986. As with the other “Residency Affidavits,” the use of a form and the absence of details detract from the probative value of the document, and it can be afforded only minimal weight as evidence of the applicant’s residence in the United States from 1981 to 1986.
- Two statements from [REDACTED], one a duplicate “Residency Affidavit” form, notarized on May 5, 2006; and the other a letter, dated June 13, 2006, that is not notarized. The former indicates that the applicant resided at [REDACTED] in Addison, Illinois, from February 10, 1986 to September 1989, consistent with information provided by the applicant. In his letter, however, [REDACTED] states that he has known the applicant for twelve years, which would not include the 1986 to 1989 period. This contradiction as well as the failure to include any details regarding what was a claimed twelve or twenty-year relationship detracts from the credibility of [REDACTED]’s statements. These documents have no probative value for these reasons.

Although the applicant has submitted numerous letters and form affidavits, they all lack sufficient detail to be found credible or probative. The duplicative language and use of fill-in-the-blank forms also detract from the probative value of the affidavits. In summary, three individuals submitted affidavits or letters indicating that the applicant resided in Goleta, California, from December 1981 to February 1986; another individual confirmed that the applicant resided at that address on those dates and that he resided in Addison, Illinois from February 1986 to September 1989; another two individuals confirmed his residence in Illinois from February 1986 to September 1989. Most of these documents contained duplicate language on fill-in-the-blank forms. Not one affiant indicated any direct personal knowledge of the applicant’s 1981 travel to or entry into the United States. Not one affiant provided any details of his or her relationship with the applicant or of the circumstances of the applicant’s residence in the United States. Although the applicant would have been only 13 years old in December 1981, when he claimed to have arrived in the United States none of the affiants described how he lived as a child in Los Angeles. There is one statement from a responsible adult, [REDACTED], the applicant’s uncle, indicating that the applicant resided with him and helped care for the uncle’s house and children, but the statement lacks details regarding this arrangement or the failure of the applicant to attend school or any other detail that would lend credibility to the statement or to the claimed relationship that was on-going from 1981 to 1986. For these reasons and the reasons noted above, these documents have minimal probative value as evidence of the applicant’s residence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States on December 2, 1981 and to have resided in California until he moved to Illinois in February 1986 and to have resided in Illinois thereafter for the duration of the requisite period. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry in 1981 and residence in California are not supported by any credible evidence in the record. In fact, based on

information from the former Immigration and Naturalization Service data-base, the applicant entered the United States in Chicago in March 1988 with a B-2 nonimmigrant visa that was issued in Mexico, and there is ample evidence submitted by the applicant indicating that he resided and worked in Illinois thereafter. However, the evidence submitted does not support a conclusion that he resided in the United States before then.

The absence of sufficient credible and probative documentation to corroborate the applicant's claim of entry in 1981 and continuous residence for the requisite period seriously 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 lack of credible documentation in support of his application, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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