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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 07 143 11795

Office: LOS ANGELES

Date: OCT 08 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. 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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period. The director also found that the applicant had abandoned the instant application by failing to appear for his legalization interview.

This office notes that, pursuant to 8 C.F.R. § 103.2(b)(15) the applicant would have no right to appeal had the application been denied based solely upon abandonment. That basis will not be further addressed. The balance of this decision on appeal will address the finding that the applicant failed to establish that he continuously resided in the United States during the requisite period.

On appeal, counsel submitted additional evidence and asserted that the evidence submitted demonstrates the applicant's eligibility.

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 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.

On the instant Form I-687 application, which the applicant signed on December 30, 2005, the applicant stated that he entered the United States on October 8, 1981. On his CSS/Newman Class Membership Determination Form the applicant stated that he first entered the United States on October 1, 1981.

On the Form I-687 application, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that from December 15, 1981 to October 15, 1987, he lived at [REDACTED] in Los Angeles, California; and that from October 1987 to April 1989 he lived at [REDACTED] also in Los Angeles.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from May 1981 to March 1985 as a mechanic for [REDACTED] at the In & Out Motorcycle Shop in South Gate, California, and that from April 1985 to October 1989 he worked as a mechanic for [REDACTED] at Cycle Master in Huntington Park, California. This office notes that the assertion that the applicant began working in the United States during May of 1981 conflicts with the applicant's assertion, on the Class Membership Determination form, that the applicant first entered the United States on October 1, 1981.

The applicant was also required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that, since that date, he had only left the United States from August 15, 1987 to September 15, 1987.

The pertinent evidence in the record is described below.

- The record contains a previous Form I-687 application, which the applicant signed on August 13, 1990. On that application the applicant stated that he lived at [REDACTED] in Los Angeles, California, from October 1981 to March 1988, and at [REDACTED], also in Los Angeles, from April 1988 until the date of that application.

This office notes that on the instant Form I-687 the applicant stated that he lived at [REDACTED] from December 15, 1981 to October 15 1987, and at [REDACTED] from December 1987 to April 1989. The residential history the applicant submitted with the August 13, 1990 application conflicts with the history he provided on the instant application.

The applicant also stated, on the August 13, 1990 application, that he worked for [REDACTED], in Vernon, California, from January 1987 to December 1987, at Cycle Parts Motorcycles in East Los Angeles, California from January 1988 to December 1988, and for Superior Motor Escorts, in Los Angeles, California, from January 1989 until the date of that application. On that application, the applicant listed no employment prior to 1987.

This employment history conflicts with the employment history the applicant provided on the instant Form I-687, on which he stated that he worked from May 1981 to March 1985 as a mechanic for [REDACTED] at the In & Out Motorcycle Shop in South Gate, California, and that from April 1985 to October 1989 he worked as a mechanic for [REDACTED] at Cycle Master in Huntington Park, California.

- The record contains another previous Form I-687. The applicant signed that application on January 24, 1991. On that application the applicant stated that he lived at [REDACTED] in Los Angeles, California from 1981 to 1988, and at [REDACTED], also in Los Angeles, from 1988 until he signed that application. This office notes, again, that on the instant Form I-687 application, the applicant stated that he lived at [REDACTED] until October of 1987, after which he moved to [REDACTED]. This additional residential history also conflicts with the residential history provided on the instant application.

The applicant also stated, on the previous Form I-687, that he worked for Superior Motor Escorts in Los Angeles from 1981 through January 24, 1991, the date of that application. On the instant application, however, the applicant stated that he worked (1) for the In & Out Motorcycle Shop in South Gate, California, from May 1981 to March 1985, (2) for Cycle Master in Huntington Park, California, from April 1985 to October 1989, and (3) for Superior Motor Escort in Los Angeles from November 1989 to May 1999. This additional

employment history also conflicts with the employment history the applicant asserted on the instant Form I-687 application.

The applicant also stated, on the January 24, 1991 Form I-687 application, that he visited Mexico from May 5, 1987 to June 15, 1987, but left the United States at no other time since January 1, 1982. This conflicts with his assertion, on the instant Form I-687 application, that he left the United States from August 15, 1987 to September 15, 1987, and at no other time since January 1, 1982.

- The record contains a form affidavit, dated September 18, 1990, from [REDACTED] Ramirez. The affiant states that he was the applicant's apartment manager when the applicant rented [REDACTED] at [REDACTED] in Los Angeles, California from October 15, 1981 to October 15, 1988. This office notes that, on the instant Form I-687, the applicant stated that he resided at that address from December 15, 1981 to October 15, 1987.

The record contains a form affidavit, dated May 9, 2007, from [REDACTED] of West Covina, California. [REDACTED] stated that he knows that the applicant has resided in the United States since February 1982 because the affiant remembers seeing the applicant at the affiant's sixth birthday party. The affiant did not state how frequently he saw the applicant.

- The record contains a form affidavit, dated May 9, 2007, from [REDACTED], of West Covina, California. [REDACTED] stated that he knows the applicant has resided in the United States since December 1981 because he met the applicant "at [the affiant's] Grandma's house for Christmas." The affiant did not specifically states during what year he met the applicant on Christmas.
- The record contains a form affidavit, dated May 8, 2007, from [REDACTED], of La Puente, California. The affiant stated that she knows that the applicant has resided in the United States since November 1981 because, "I met [the applicant] in South Gate. He was my mother's neighbor and we are in contact since then." This office notes that, on the instant Form I-687, the applicant did not claim to have lived in South Gate at any time during the period of requisite residence.

The record contains a form affidavit, dated May 8, 2007, from [REDACTED] of La Puente, California. Ms. [REDACTED] stated that she knows that the applicant has resided in the United States since November 1981 because she met him at a wedding at approximately that time.

- The record contains a form affidavit, dated May 8, 2007, from [REDACTED], of La Puente, California. Mr. [REDACTED] stated that he knows the applicant has resided in the United States since November 1981 because the affiant met the applicant through the affiant's wife and the applicant's daughter [REDACTED] is now the Goddaughter of the affiant and his wife.

- The record contains a form affidavit, dated May 8, 2007, from [REDACTED] who stated that he knows that the applicant has been in the United States since February 1982 because he met the applicant at the affiant's mother's house for the affiant's grandmother's birthday. The affiant did not state the frequency of his contact with the applicant.
- The record contains an affidavit, dated May 9, 2007, from [REDACTED] Mr. [REDACTED] address is not provided in that affidavit. Mr. [REDACTED] stated that he has known the applicant since 1981, but did not state when or whether the applicant has resided in the United States.
- The record contains an affidavit, dated May 15, 2007, from [REDACTED]. Neither Mr. [REDACTED]' address nor his phone number was provided in that affidavit. Mr. [REDACTED] stated that he has known the applicant since 1981, but does not state when or whether the applicant lived in the United States.
- The record contains a form affidavit, dated May 9, 2007, from [REDACTED] of Cudahy, California. Mr. [REDACTED] stated that he knows from personal knowledge that the applicant has resided in the United States since 1981. Mr. [REDACTED] did not state the basis of that asserted personal knowledge.
- The record contains a form affidavit, dated May 9, 2007, from [REDACTED] who lives at the same address in Cudahy, California, that [REDACTED] provided. Ms. [REDACTED] stated that she knows from personal knowledge that the applicant has resided in the United States since 1981. Ms. [REDACTED] did not otherwise detail the basis of that personal knowledge.
- The record contains what purport to be rent receipts showing that the applicant rented the premises at [REDACTED] in Los Angeles from October 15, 1981 to November 15, 1981, December 15, 1981 to January 15, 1982, from May 15, 1983 to June 15, 1983, July 15, 1985 to August 15, 1985, November 15, 1985 to December 15, 1985, April 15, 1986 to May 15, 1986, June 15, 1987 to July 15, 1987, from October 15, 1987 to November 15, 1987, from December 15, 1986 to January 15, 1987, and from March 15, 1988 to April 15, 1988. The signature of the person who signed those receipts is illegible, and the receipts provide no contact information. Comparison of the signatures on the rent receipts to the signature on the September 18, 1990 affidavit of [REDACTED] however, indicates that they were apparently signed by the same person.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

As is detailed above, the record reveals various conflicts between the applicant's assertions and his evidence. 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, 591-92 (BIA

1988). The discrepancies cited cast doubt, not only on the individual assertions and pieces of evidence that conflict, but on all of the applicant's assertions and all of his evidence.

In a Notice of Intent to Deny (NOID), dated March 23, 2007, the director stated 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 granted the applicant thirty days to submit additional evidence.

In response counsel submitted the affidavits of [REDACTED], [REDACTED], and [REDACTED], all of which are described above.

In the Notice of Decision, dated June 4, 2008, the director denied the application. The director noted that the residential history that the applicant provided on his 1990 Form I-687 conflicts with the employment history the applicant provided on the instant Form I-687.

On appeal, counsel characterized the discrepancies noted in the decision of denial as minor clerical errors, noting that the applicant was not proficient in English when some of the documents in the record were submitted. Counsel stated that, on the 1990 Form I-687, the applicant incorrectly listed [REDACTED], in Los Angeles, California as his home address from October 1981 to March 1988, when it was, in fact, his workplace.

This office notes that the instant Form I-687 does not indicate that the applicant ever worked at that address. Rather, it indicates that the applicant worked for In & Out Motorcycle Shop at [REDACTED] in South Gate from May 1981 to March of 1985, and that he worked for Cycle Master at [REDACTED] in Huntington Park from April 1985 to October 1989. The employment history that counsel proposed to reconcile that conflict creates another conflict. The employment history proposed by counsel conflicts with the employment history the applicant provided on the instant application.

Counsel submitted the affidavit of [REDACTED] on appeal, and submitted additional photocopies of evidence previously submitted. Counsel stated that more evidence would have been available, but it was destroyed in a fire on April 29, 1992 at [REDACTED] Los Angeles, California, where counsel stated that the applicant then lived. Counsel provided various documents pertinent to that fire and the civil unrest that occasioned it.

This office notes that the instant Form I-687 indicates that the applicant neither lived nor worked at [REDACTED] in Los Angeles during 1992, nor at any other time, although he did claim, on a previous Form I-687, to have lived there. The residential history counsel proposed on appeal conflicts with the residential history the applicant provided on the instant Form I-687.

In any event, the 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. This office will not base its decision on unidentified evidence that counsel asserts would have been available had a fire not occurred.

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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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