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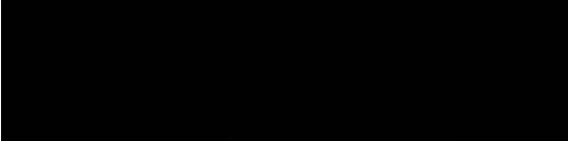
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Washington, DC 20529



U.S. Citizenship  
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FILE:

MSC-05-231-13074

Office: LOS ANGELES

Date: OCT 17 2008

IN RE:

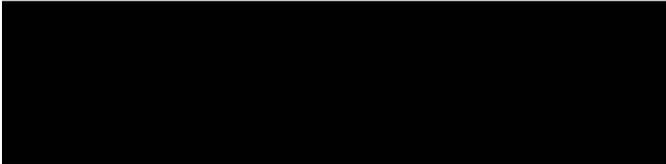
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. 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. Upon first receipt of the appeal, the AAO rejected it, after finding it was filed untimely. Upon review of the matter, the AAO finds that this determination was made in error. Therefore, the AAO has withdrawn its rejection of the appeal and has *sua sponte* reopened the case. Therefore, the decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. Specifically, the director noted that the applicant was not consistent when he stated the number of his absences from the United States during the requisite period, casting doubt on whether he maintained continuous residence in the United States during that period. The director further noted inconsistencies in the record regarding the applicant's residence during the requisite period and stated that he did not consistently represent the number of children he had fathered during the requisite period.

On appeal, counsel asserts that the director failed to accord due weight to the evidence the applicant submitted in support of the application.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. 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.12(e).

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 (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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit in support of his or her application, the regulations also permit the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant has submitted sufficient credible evidence to prove that he entered the United States on a date before January 1, 1982 and then resided continuously in an unlawful status since that time and for the duration of the requisite period. Here, the applicant has not 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 August 30, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant indicated his addresses in the United States during the requisite period were all in California as follows: [REDACTED] in Corona from June 1981 to December 1982; [REDACTED] in Orange from January 1983 to December 1984; [REDACTED] in Orange from January 1985 to November 1987; and [REDACTED] in Orange from December 1987 to December 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period, when he went to visit family in Mexico from February to March in 1988. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was self-employed from 1981 until 1990. He did not provide an address or type of employment associated with this self-employment.

The record also contains a Form I-687 submitted to establish class membership on April 3, 1990. This Form I-687 is consistent regarding the applicant’s addresses of residence and absences from the United States during the requisite period. However, of note, the applicant indicates he is

married on this application, but when he was asked to list the names and dates of birth of his wife and children, he stated that these were, "unknown."

Also in the record is a Form I-485 Application to Register Permanent Resident or Adjust Status. At part #3B of this application, the applicant stated that he has four children born in Mexico during the requisite period: [REDACTED] who was born on March 31, 1982; [REDACTED] who was born on July 12, 1983; [REDACTED] who was born on July 4, 1986; and [REDACTED] who was born on February 24, 1988.

Further in the record is the transcript of a sworn statement made by the applicant on March 17, 2000, when he was apprehended for using a fraudulent document to attempt to enter the United States. In this statement, the applicant asserted that he had resided in the United States for 12 years. This indicates that the applicant had resided in the United States since approximately 1988. This is inconsistent with his current claim that he has resided in the United States since before January 1, 1982. This inconsistency casts doubt on the applicant's claim that he resided continuously in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains notes taken by a Citizenship and Immigration Services (CIS) office at the time of the applicant's interview regarding his Form I-687 application on May 16, 2007. The record reveals that during this interview, the applicant stated that he was absent from the United States on five occasions, two of which were during the requisite period.

On November 21, 2006, the applicant submitted a signed, sworn statement, in which he asserted that he was absent from the United States on five occasions. He stated that he did not remember the dates associated with the first two times he re-entered the United States. However, he did remember that he was absent from February 1988 until March 1988.

The regulation at 8 C.F.R. 245a.12(f) states in pertinent part that to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony.

In this case, the applicant submitted the following evidence that is relevant to his claim that he resided continuously in the United States for the requisite period prior to the date the director issued the Notice of Intent to Deny (NOID):

1. Birth Certificates for the applicant's children that state the following:

- [REDACTED] was born on July 4, 1986 in Mexico. This child's birth was registered on April 24, 1987 in Mexico.
  - [REDACTED] was born on February 24, 1988 in Mexico. This child's birth was registered on April 8, 1988 in Mexico.
  - [REDACTED] was born on July 12, 1983 in Mexico. This child's birth was registered on May 1, 1984 in Mexico.
  - [REDACTED] was born on March 31, 1982. This child's birth was registered on June 2, 1982 in Mexico.
2. A statement from [REDACTED] who states that he met the applicant in Newport Beach. He states that the applicant has been a trusted friend for a long time. However, the affiant does not state whether he knows if the applicant ever resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that he did so.
  3. A statement from [REDACTED] who states that he met the applicant while he was at a party. He states that he has known the applicant since that time, and states that the applicant is a good man. However, the affiant does not state whether he knows if the applicant ever resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that he did so.
  4. An affidavit from [REDACTED], who states that she personally knows that the applicant resided in the United States in Wilmington, California from February 1981 until at least April of 1990 when she signed the affidavit. However, the applicant stated that he did not enter the United States until June of 1981 on his Form I-687. Also on this form, he did not indicate that he ever resided in Wilmington, California during the requisite period. The affiant states that the applicant worked as a gardener for her neighbor. She states that she hired the applicant to care for her lawn, which he did until 1989. However, she fails to indicate when the applicant began this work. The affiant further fails to state where she first met the applicant or whether she first met him in the United States. She further does not indicate the frequency with which she was the applicant during the requisite period or whether there were periods of time during that period when she did not see him.
  5. Registered mail receipts that indicate that the applicant sent registered mail from Santa Ana, California at least yearly from 1981 to 1988. It is noted that in the receipts from 1981 and 1982, his address is shown as "[REDACTED]" in Corona, California. This street name is not consistent with the street name that corresponds with the address the applicant stated he resided at in 1981 and 1982 on his Form I-687.

Though the applicant submitted evidence of his residence in the United States subsequent to the requisite period, the issue in this proceeding is whether the applicant has submitted sufficient evidence to satisfy his burden of proving that he resided in the United States for the duration of the requisite period. As this evidence does not pertain to the requisite period, it is not relevant to the matter at hand. Therefore, it is not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 26, 2007. In the NOID, the director noted that the applicant's children's birth certificates indicate that the applicant was present at the registrations of their births on June 2, 1982, May 1, 1984, and April 24, 1987. The director also stated that irregularities were noted in the postal receipts he submitted in support of his application. The director concluded by stating that the evidence submitted by the applicant did not satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The director denied the application on January 11, 2008. In her decision, the director reiterated that the evidence the applicant submitted did not satisfy his burden of proof. She noted that the affidavits the applicant submitted were lacking in detail and also stated that the applicant's March 17, 2000 sworn statement indicated that his first entry into the United States was in 1988. She emphasized that the applicant's children's birth certificates indicated that the applicant had been absent from the United States in 1982, 1984 and 1987 when his children's births were registered and also noted that her office found the postal receipts submitted by the applicant to contain irregularities.

Counsel for the applicant submitted a Form I-290B with the proper fee, which was stamped received by the Los Angeles District Office on February 28, 2008.

The AAO rejected this appeal as untimely filed. However, counsel for the applicant responded to the AAO's decision rejecting the appeal by submitting a FedEx receipt that indicates that counsel's office sent the appeal for [REDACTED] overnight on February 8, 2008. The FedEx tracking number reveals that the document associated with the tracking number arrived timely on February 11, 2008.

Therefore, as counsel has provided convincing evidence that the Los Angeles District Office did receive the applicant's appeal timely, the AAO withdraws its rejection of the appeal and will *sua sponte* reopen the case for further review and consideration.

On appeal, counsel for the applicant argues that the director ignored evidence in the record and failed to accord other evidence due weight. Counsel states that the declarations submitted by the applicant prove that the applicant resided in the United States during the requisite period. Counsel states that the evidence the applicant submitted satisfies his burden of proof.

The AAO has reviewed the evidence in the record that is relevant to the applicant's claim that he resided continuously in the United States for the duration of the requisite period and has found

that counsel is not persuasive. Of the three declarations the applicant submitted, only affiant [REDACTED] states that she knows that the applicant resided in the United States during the requisite period. However, she states that he resided in Wilmington, California for the duration of the requisite period, when the applicant did not indicate that he ever resided in Wilmington, California during that period. She also indicated that the applicant resided in the United States since February 1981 when he has stated that he did not enter the United States until June of that year, casting doubt on her assertions regarding his residency during the requisite period. Further casting doubt on the applicant's claimed residence in the United States is his March 17, 2000 sworn statement, on which he indicated that he had resided in the United States since approximately 1988, his children's birth certificates, which indicate his presence in Mexico three times during the requisite period and the fact that the applicant could not recall dates associated with his absences from the United States during the requisite period. Though the applicant submitted registered mail receipts that bear stamps indicating they were issued during the requisite period, the director's office identified these documents as being questionable. The applicant has not addressed this finding on appeal.

Pursuant to 8 C.F.R. § 245a.12(e), 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 inconsistencies in the record regarding the applicant's date of first entry into the United States, his absences from the United States and his addresses of residence in the United States, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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