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FILE:

MSC-06-102-12868

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:

SELF-REPRESENTED

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 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief in which he asserts he was a minor when he first entered the United States and he submits additional evidence for consideration in support of his application.

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 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet 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 CIS on January 10, 2006. At part #16, the applicant states that he last entered the United States in September 1980. 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 stated his address in the United States during the requisite period was [REDACTED] in Los Angeles, California from April 1981 until November 1991. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he traveled to Mexico because of a family emergency from June to July of 1987. 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 not employed during the requisite period because he was a minor. He states that his first employment in the United States was as a care giver in “The Rest Heaven” in Compton, California from May 1989 to January 2005.

Further in the record are notes taken at the time of the applicant’s interview with a Citizenship and Immigration Services (CIS) officer on October 13, 2006. These notes indicate that at the time of the applicant’s interview, he stated that he first entered the United States without inspection in September 1980 with a friend named [REDACTED] and that his parents stayed

behind in Mexico. He went on to indicate that his first employment in the United States began in 1981, when he started helping a street vendor sell fruit. He stated that his employer's name was [REDACTED] and that he worked with him until 1989. He further stated that he met [REDACTED] in 1980 when [REDACTED] left him in her care and that he resided with her from 1981 to 1989 after [REDACTED] went to [REDACTED] to work in the fields. The applicant also stated that affiants [REDACTED] and [REDACTED] were his girlfriend's parents and that his girlfriend is named [REDACTED]. He also stated that affiants [REDACTED] and [REDACTED] are who he met in 1980 were his neighbors.

Also in the record is a sworn statement taken at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on October 13, 2006. In this statement, the applicant states that he first entered the United States in 1980 and that his only exit from the United States since that time was in 1987. He states that his first employment in the United States was selling fruit door to door.

It is noted that the applicant's sworn statement and part #16 of his Form I-687 indicate that he first entered the United States in 1980, however, he stated that his first address of residence in the United States began in April 1981 on his Form I-687. It is also noted that the applicant stated on his sworn statement that he worked selling fruit beginning in 1981, but indicated that he was unemployed for the duration of the requisite period on his Form I-687. This inconsistency casts doubt on whether the applicant accurately represented his employment history in the United States on his Form I-687.

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 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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 failed to submit evidence that he resided in the United States for the requisite period prior to the date the director of the National Benefits Center issued his Notice of Intent to Deny (NOID).

The director of the National Benefits Center issued a (NOID) to the applicant in which he stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a statement in which he asserted that he worked undocumented since 1981 and paid his bills in cash he has no records of taxes or bills paid during the requisite period. He requested that his application be reconsidered and submits the following evidence that is relevant to his claim that he resided in the United States during the requisite period:

- An affidavit from [REDACTED], who submits photocopies of her California Driver's License and her Resident Alien Card and states that the applicant resided in the United States from April 1980 until the present. The affiant states that she knows this because she had a personal relationship with the applicant's father. It is unclear how the affiant's relationship with the applicant's father, who the applicant has not stated ever resided in the United States, would have any bearing on her knowledge of the applicant's residence in the United States. The affiant states that the applicant's address was [REDACTED] [REDACTED] in Los Angeles, California and she indicates that this is her current address of residence. However, the affiant does not state when the applicant resided at this address. The affiant further fails to indicate where she first met the applicant or whether she first met him in the United States. It is noted that at the applicant indicated that he began to reside in the United States in April 1981 rather than April of 1980, as this affiant indicates. It is further noted that the applicant indicated on his Form I-687 that he did not enter the United States until September of 1980. It is further noted that the affiant did not indicate whether there were periods during the requisite period when she did not see the applicant. Further, though the applicant stated that he resided with this affiant when he was interviewed by a CIS officer, this affiant does not state that he resided with her in the affidavit. Because this affidavit is significantly lacking in detail, it can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- Affidavits from [REDACTED] and [REDACTED], who submit a photocopies of their California Senior Citizen Identification Cards and state that the applicant resided in the United States from September 1980 until the present. The affiants state that they know this

because they had a personal relationship with the applicant's father. It is unclear how the affiants' relationships with the applicant's father, who the applicant has not stated ever resided in the United States, would have resulted in the affiants' knowledge of the applicant's residence in the United States. The affiants state that the applicant's address was [REDACTED] in Los Angeles, California. However, the affiants do not state when the applicant resided at this address. The affiants further fail to indicate where they met the applicant or whether they met him in the United States. The affiants did not indicate the frequency with which they saw the applicant during the requisite period or whether there were periods during the requisite period when they did not see the applicant. Because these affidavits are significantly lacking in detail, they can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.

- Affidavits from [REDACTED], and [REDACTED] who submit photocopies of their California Driver's Licenses and state that the applicant resided in the United States from February 1981 until the present. The affiants state that they know this because they had a personal relationship with the applicant's father. It is unclear how the affiants' relationships with the applicant's father, who the applicant has not stated ever resided in the United States, would have resulted in the affiants' knowledge of the applicant's residence in the United States. The affiants state that the applicant's address was [REDACTED] in Los Angeles, California. However, the affiants do not state when the applicant resided at this address. The affiants further fail to indicate where they met the applicant or whether they met him in the United States. The affiants failed to indicate the frequency with which they saw the applicant during the requisite period or whether there were periods during the requisite period when they did not see the applicant. Because these affidavits are significantly lacking in detail, they can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- A California Identification Card issued to the applicant on June 1, 1989. This Identification Card indicates the applicant's address of residence at the time the card was issued was [REDACTED] in Compton, California. It is noted that the applicant indicated on his Form I-687 that he resided at [REDACTED] in Los Angeles, California from 1981 until 1991. This inconsistency casts doubt on whether the applicant has accurately represented his addresses of residence in the United States on his Form I-687.

It is noted that the applicant also submitted evidence that pertains to 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. Therefore, evidence that does not pertain to that period is not relevant to this proceeding and is not discussed here.

The director denied the application for temporary residence on January 11, 2007. In denying the application, the director stated that though the applicant submitted affidavits as evidence of his

residence in the United States during the requisite period, these affidavits did not satisfy his burden of proof. The director noted that though the applicant stated that he resided with affiant [REDACTED] for the duration of the requisite period at the time of his interview with a CIS officer and though she indicates that her current address is the address that the applicant indicated he resided at for the duration of the requisite period, she does not state that the applicant ever resided with her in her affidavit. The director went on to say that the affiants from whom he submitted affidavits did not provide evidence that they themselves were present in the United States during the requisite period or evidence that they had contact with the applicant during that period. Therefore, the director found that the applicant failed to satisfy his burden of proof.

On appeal, the applicant asserts that he was only 13 years old when he first entered the United States and that he did not pay for anything during the requisite period because he resided with [REDACTED]. He asserts that he has resided in the United States since 1980. He states that [REDACTED] who he entered the United States with, returned to Mexico after bringing him and has since passed away. He requests that the following additional evidence be considered in support of his application:

- A second affidavit from [REDACTED]. This affidavit is also submitted with a photocopy of the affiant's California Driver's License and is dated January 20, 2007. The affiant submits a photocopy of her 1980 Form 1040 and her 1978 Forms W-2 and 1040. It is noted that this applicant's Form 1040 from 1980 indicates that affiants [REDACTED] and [REDACTED] are her parents and that they resided with her during all 12 months of the year 1980. It is also noted that the affiant's street address does not appear of this Form 1040 from 1980. The affiant states that she currently resides at [REDACTED] in Los Angeles. She states that she has known the affiant since 1980, when he arrived in the United States with [REDACTED] who was a friend of the applicant's parents. She goes on to say that [REDACTED] left the applicant with her at that time. However, the affiant does not state when the applicant began to reside with her, when his residence with her ended or whether he resided with her for the duration of the requisite period. This is significant, because while the applicant has stated on his Form I-687 that he entered the United States in September 1980 but did not begin to reside in the United States until April 1981, this affiant previously stated that she personally knows that the applicant began to reside in the United States in 1980. The affiant further fails to state whether there were periods of time during the requisite period when she did not see the applicant.
- A second affidavit from [REDACTED] that is dated January 21, 2007. The affiant submits her Form 1040A from 1979 that indicates she resided in California in 1979 and a loan document that is dated in 1978 and indicates that the affiant resided in California at that time. The affiant states that she knows that she has known the applicant since February 1980 and that she met him through his father. However, the affiant does not state where she first met the applicant or whether she first met him in the United States,

which is significant, because the applicant indicated on his Form I-687 that he first entered the United States in September 1980. The affiant further fails to state whether she knows if the applicant resided in the United States at any time during the requisite period. Therefore, this affidavit carries no weight as evidence of the applicant's residence in the United States during that period.

- A second affidavit from [REDACTED] that is dated January 21, 2007. The affiant submits a photocopy of her Permanent Resident Card and of her California Senior Citizen Identification Card and states that she has known the applicant since 1980. She states that she knows him and his immediate family in Mexico and attests to the applicant's moral character. However, the affiant does not state whether she knows if the applicant resided in the United States during the requisite period. Therefore this affidavit carries no weight as evidence that he did so.
- A second affidavit from [REDACTED] that is dated January 21, 2007. The affiant submits photocopies of his California Driver's License and his Permanent Resident Card and states that he has known the applicant since about 1980. He states that he knows the applicant and his immediate family that resides in Mexico. He attests to the applicant's moral character. However, the affiant does not state whether he knows if the applicant resided in the United States during the requisite period. Therefore this affidavit carries no weight as evidence that he did so.

As is noted above, evidence in the record is not consistent regarding when the applicant first entered or began to reside in the United States. The applicant has also not been consistent regarding his employment during the requisite period, and many of the affiants from whom he provided affidavits stated that they know that the applicant began to reside in the United States in either 1980 or 1981 because they are friends with his father. It is not clear how friendship with the applicant's father would cause an affiant to have personal knowledge that the applicant first entered the United States prior to January 1, 1982, as the applicant stated that his father stayed behind in Mexico when he first entered at the time of his interview with a CIS officer. Further, the affidavits submitted by the applicant are significantly lacking in detail with regards to how the affiant's first met the applicant and the frequency with which they saw him in the United States.

Though affiant [REDACTED] provided additional details regarding the applicant's residence with her in her January 2007 affidavit, she failed to state whether there were periods of time when she did not see the applicant during the requisite period. Further, though the applicant stated that he resided at [REDACTED] address of residence until 1991 on his Form I-687, he has submitted a California Identification Card issued to him in 1989 that indicates that he resided at a different address of residence at that time, casting doubt on whether he has accurately represented his dates of residence at that address. Also casting doubt on the applicant's claimed residence in the United States during the requisite period is that he has stated both that he was unemployed for the duration of the requisite period on his Form I-687, but

stated that he was employed as a vendor for the entire requisite period at the time of his interview with a CIS officer.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.