



**U.S. Citizenship  
and Immigration  
Services**

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LC

[Redacted]

FILE: [Redacted]  
MSC-05-207-12141

Office: SAN FRANCISCO (FRESNO) Date: **SEP 18 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:  
[Redacted]

**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, San Francisco. 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. Specifically, the director stated that there were discrepancies in the record regarding the applicant's absences from the United States during the requisite period. The director further stated that the applicant failed to submit all of the evidence that his office required the applicant to submit in a Form I-72 Request for Evidence. The director found that the evidence in the record did not allow the applicant to satisfy his burden of proving that he resided continuously in the United States 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 through counsel. In this brief, counsel asserts that the applicant provided the director with all of the evidence requested of him. He submits additional evidence 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.

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 April 25, 2005. At part #30 of the Form I-687 application the applicants was asked to list his residences in the United States since his first entry, the applicant stated that he resided at the following addresses during the requisite period: [REDACTED] in Fresno, California from October 1980 until **January 1987**; [REDACTED] in Sanger, California from February 1987 to December 1987; and [REDACTED] in Fresno, California from **December 1987** until December 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he never been absent from the United States. 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. He stated that his first employment was as a truck driver beginning in January 1996. However, notes taken on this form by an immigration officer indicate that the applicant submitted an addendum that included additional employment subsequent to submitting his Form I-687.

The record also contains a Form I-687 that was signed by the applicant on January 31, 1992. On this Form I-687, the applicant indicated his residences during the requisite period consistently

with those in his subsequently filed Form I-687. However, at part #35 of this application where the applicant was asked to list his absences from the United States since he first entered, he indicated that he was absent from the United States from July 10, 1987 until August 8, 1987. At part #36, the applicant indicated that he was employed doing odd jobs from October 1980 until 1992. It is noted that the applicant would have been 12 years old in October 1980.

Also in the record are sworn statements taken from the applicant by a Citizenship and Immigration Services (CIS) officer on June 20, 2005. In these statements, the applicant asserted that he entered the United States in October 1980. He stated that he worked at odd jobs, sometimes for contractors on farms since that time. He indicated that he worked pruning grapes, picking grapes and cleaning and also at a carwash when he was 17 or 18 years old. He stated that he worked at this carwash ranging from once a month to several times a week and that he was paid by [REDACTED] who was a truck driver. He indicated that he never resided in New York but that he obtained his commercial Driver's License there. He stated that a friend's address appears on his New York State Driver's License. He went on to say that he first entered the United States with his mother without inspection across the border near Blaine, Washington.

The applicant has the burden of proving by a preponderance of the evidence that he 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 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).

Prior to the director's issuance of a Form I-72 Request for Evidence, the applicant submitted the following documents that are relevant to his residence in the United States during the requisite period:

- A New York State Commercial Driver License issued to the applicant in December 2000. It is noted that the applicant has never indicated that he resided in New York State on either of his Forms I-687. That the applicant has a government issued document that indicates that he resided in New York in 2000 when he has consistently claimed to CIS that he has never resided in New York casts doubt on whether the applicant has accurately indicated his addresses of residences to CIS.
- A California Identification Card issued to the applicant in October 2004.
- An affidavit from [REDACTED] that was notarized on February 1, 1992. The affiant states that he is a Canadian Citizen and that the applicant visited him in Surrey, British Columbia from July 10, 1987 until August 8, 1987 to visit the affiant's family. It is noted that the

applicant did not indicate that he was absent from the United States during the requisite period in his Form I-687 submitted in 2005.

- A California Identification Card issued to the applicant in March 2001 that indicates his address is in North Hollywood, California.
- An affidavit from [REDACTED] that was notarized on February 28, 2002. The affiant states that he knows that the applicant has resided in Fresno, California from June 1981 until the date he signed his affidavit. The affiant goes on to state that he and the applicant are in the same business and meet each other at least once a week. However, he fails to state when he began to be in the same business as the applicant or indicate whether they began to meet once a week during the requisite period. Though the affiant states that he knows the applicant resided in the United States since June 1981, he fails to indicate where he first met the applicant or whether he first met him in the United States. He further fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Though this affiant states that the applicant has always resided in Fresno, California, the applicant's Form I-687 indicates that the applicant resided in California in Fresno, Sanger, and Selma, and North Hollywood and in Washington State in Tukwila and Seattle from 1981 until 2002 and that in 2002 he resided in North Hollywood, California. Because this affiant provides testimony that is not consistent with the applicant's Form I-687 regarding where he has resided in the United States and because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on February 26, 2002. The affiant indicates he is a truck driver and states that he knows that the applicant resided in Fresno, California from August 1985 until he signed his affidavit in 2002. The affiant states that he and the applicant are in the same business, so they meet each other at least once a week. However, the affiant fails to state when he began to be in the same business with the applicant or whether they began to meet each other once a week during the requisite period. The affiant fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Though this affiant states that the applicant resided in Fresno from August 1985 until 2002, this is not consistent with the applicant's Form I-687, which indicates that the applicant resided in Fresno, California, Sanger, California, Selma, California, Seattle, Washington, Tukwila, Washington and North Hollywood, California from 1985 until 2002. Because this affiant provides testimony that is not consistent with the applicant's Form I-687 regarding where he has resided in the United States and because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- Two affidavits from the applicant that are dated January 28, 1992. Collectively in these affidavits, the applicant states that from February 1987 to December 1987 he resided [REDACTED] in Sanger, California and that at that time he performed odd jobs, such as washing cars and working on farms. The applicant states that he then resided at [REDACTED] in Fresno, California from December 1987 to December 1989 and that he was employed performing temporary farming work.

- An affidavit from [REDACTED] that is dated January 28, 1992. The affiant states that the applicant is his nephew and that the applicant resided with him from 1980 until January 1987. The affiant states that he paid all expenses incurred by the applicant at that time. Though the affiant states that the applicant resided with him during the requisite period, he does not state whether there were periods of time during that period when he did not see the applicant. It is noted that the applicant was born in August 1968 and therefore he would have been 12 years old in 1980 and would have remained a minor until August of 1986. This affiant does not indicate that he was responsible for the applicant's welfare or state how he came to care for the applicant.

It is noted that the applicant submitted documents that prove his residence in the United States subsequent to the requisite period. However, the issue in this proceeding is whether the applicant submitted sufficient evidence to prove that he resided in the United States from a date before January 1, 1982 until the end of the requisite period. That period ended when the applicant attempted to file for legalization during the original filing period, which was between May 5, 1987 and May 4, 1988. Documents that assert that the applicant resided in the United States subsequent to that period are not relevant for this proceeding and are therefore not discussed here.

On June 20, 2005 the director issued two Forms I-72 Request for Evidence to the applicant. The record shows that in them, the applicant was instructed to submit the following:

1. His registered Birth Certificate;
2. Secondary evidence of the applicant's birth if his birth was registered more than six months after the date of his birth;
3. An English translation if such document(s) were not in English;
4. Proof of continuous residence in an unlawful status since prior to January 1, 1982 and through the date the applicant was front desked;
5. Proof of the applicant's continuous physical presence in the United States from November 6, 1986 until the May 4, 1988 or the date he was "front desked;"
6. A properly completed Form I-687 as the director determined that the Form I-687 previously submitted by the applicant was not complete. The director specifically requested that the applicant submit such a form showing all of his absences from the United States, his employment in the United States and a complete list of all of his children;
7. Proof of the applicant's employment history for the last five years;
8. If needed, a properly completed, notarized Form I-134 Affidavit of support along with supporting documentation;
9. A completed Form I-693;
10. A copy of a lease agreement;
11. A copy of the ownership paperwork for his truck.

On September 12, 2005, the applicant's attorney dated a letter in response to this Form I-72 Request for Evidence. With this letter he submitted the following:

- A copy of the original document showing that the applicant's birth records were not found and this document's translation. The original document is dated January 3, 2002.

- Copies of notarized affidavits regarding the applicant's birth as follows:
  - An affidavit from [REDACTED] who indicates he is the applicant's father and states that he submitted a request to obtain the applicant's birth certificate and that certificate was not found. He states that the applicant was born on August 25, 1968 in the Punjab region of India.
  - An affidavit from [REDACTED] that is dated August 31, 2005. The affiant states that he was born in 1961 in India and that he personally knows that the applicant was born on August 25, 1968 in the Punjab region of India. He states that he was present for the applicant's birthday celebration.
  - An Affidavit of birth from [REDACTED] that is dated September 1, 2005. The affiant states that he was born in 1958 in India and that he knows that the applicant was born in 1968 in the Punjab region of India. He states that he was present at the applicant's birthday celebration.
- An affidavit from [REDACTED] that was notarized on September 13, 2005. The affiant submits a photocopy of her Certificate of Naturalization with her affidavit. The affiant states that she first met the applicant on January 9, 1985 in Sunnyvale, California because the applicant is her husband's best friend. The affiant also states that she first met the applicant when she attended her wedding ceremony on May 15, 1983. The affiant states that when the applicant first came to the United States, she resided on [REDACTED] in Santa Clara, California. The affiant states that during the requisite period she and the applicant talked on the telephone and saw each other on holidays.
- An affidavit from [REDACTED] that was notarized on August 29, 2005. The affiant submits a photocopy of the identity page of his United States Passport and his California Driver's License with his affidavit. The affiant states that the applicant resided in the United States continuously from 1981 until the end of the requisite period. The affiant states that he first met the applicant in January 1981 at a New Year's Day party. He states that during the requisite period he would telephone the applicant once or twice a month and that they went out on weekends once a month.
- Photocopies of tax documents issued subsequent to the requisite period.
- A completed Form I-693.
- Photocopies of pages of a Form I-687 that indicate the following:
  - Part #32 of this application indicates that the applicant was absent from the United States in 2001 and 2004. It is noted that the applicant previously stated in his Form I-687 submitted in 1992 that he was also absent from the United States in 1987 when he went to Canada. This absence is not noted here.

- Part #33 indicates that the applicant was employed as a seasonal worker from October 1980 until January 1991. It is noted that the applicant was 12 years old in October 1980.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 10, 2005. In this NOID, the director stated that the applicant failed to submit evidence that was sufficient to allow him to meet his burden of proof. The director noted that the applicant submitted affidavits in support of his claim of having resided continuously in the United States for the duration of the requisite period. However, the director found that these affidavits did not satisfy the applicant's burden of proof. Specifically, the director stated that the affiants [REDACTED] and [REDACTED] did not provide evidence that they resided in the United States during the requisite period. The director found that the evidence the applicant submitted did not establish that he maintained continuous residence in the United States for the duration of the requisite period. The director noted that the applicant was issued two Forms I-72 and stated that the applicant's response to the Form I-72 did not satisfy his burden of proof. The director noted that the applicant failed to submit an IRS Form 1099, a complete listing of his residences, or either original or copies of his children's birth certificates. The director also noted that though the applicant was of school age during the requisite period, he failed to submit school records and that though he indicated that his parents were still alive, he did not submit evidence of correspondence to or from them during the requisite period. The director concluded that the applicant failed to meet his burden of proof but granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following:

- A photocopy of the birth certificate of the applicant's child, [REDACTED]. This certificate indicates that the applicant's son was born at the Valley Meical Center in Fresno, California on April 11, 1995.
- A photocopy of the previously submitted affidavit from [REDACTED]
- A second affidavit from [REDACTED] that was notarized on December 5, 2005. With this affidavit, the affiant submits a photocopy of her California Driver's License and her Social Security Card. In this affidavit, the affiant states that she first met the applicant in the winter of 1980 in Canada and then saw him in the United States in Sunnyvale, California. The affiant also states that she met the applicant for the first time at her wedding ceremony in May of 1983. However, she does not state whether she was married in Canada, where she indicates she resided until 1985, in the United States, or elsewhere. The affiant has not been consistent regarding when or where she first met the applicant. Further, though this affiant's previously submitted affidavit indicated that she resided on [REDACTED] Santa Clara, California when the applicant entered the United States, in this affidavit, she indicates that she resided on [REDACTED] in Victoria, British Colombia in Canada from 1981 until 1985. These inconsistencies cast doubt on statements made by this affiant.
- A page of a Form I-687 that indicates the applicant's addresses in the United States since his arrival. Though dates associated with the applicant's residences subsequent to the requisite

period are not consistent with those on his Form I-687 submitted on April 25, 2005, the statements regarding his residences during the requisite period are consistent.

The director denied the application for temporary residence on September 14, 2006. In denying the application, the director noted that the applicant did not submit all of the documents requested of him in the Form I-72. The director specifically noted that though the applicant was asked to provide a list of all of his children and their original birth certificates, he provided a photocopy of only one birth certificate. The director also noted that his office did not receive evidence regarding where affiant [REDACTED] resided during the requisite period or what his legal status was. The director further noted that the testimony [REDACTED] Johal provided in her second affidavit was not consistent with what she provided in her first affidavit.

On appeal, the applicant submits a letter from his attorney. He resubmits the previously submitted affidavit from [REDACTED]. With this affidavit he submits a photocopy of this affiant's Certificate of Naturalization issued to him during the requisite period, on June 9, 1986. The applicant also submits an original birth certificate for his son, [REDACTED] that is identical to its previously noted photocopied version.

Though the applicant has submitted evidence that indicates that an affiant from whom he submitted an affidavit was present in the United States during the requisite period and became a citizen in 1986, he has continued to fail to provide sufficient evidence to satisfy his burden of proving that he himself resided in the United States during the requisite period.

The applicant has not been consistent regarding his absences from the United States, indicating that he was absent in 1987 on his Form I-687 submitted in 1992, but indicating that he was not absent during the requisite period on his subsequently filed Form I-687. He has submitted affidavits from [REDACTED] that are not consistent regarding where the affiant resided during the requisite period or when or where she first met the applicant. This casts doubt on statements made by this affiant. Similarly, the applicant has submitted affidavits from [REDACTED] that states that the applicant resided in Fresno, California from 1985 until 2002 and from [REDACTED] who states that the applicant resided in Fresno, California from 1981 until 2002. However, the applicant stated on his Form I-687 that he resided in Fresno from 1980 until 1987 and then resided in California in Sanger, and Selma, and North Hollywood and in Washington State in Tukwila and Seattle from 1987 until 2002. These inconsistencies cast doubt on statements made by these affiants.

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).

Though the applicant submitted an affidavit from [REDACTED] in January of 1992 in which Mr. [REDACTED] stated that the applicant, who is his nephew and was a minor, resided with him from 1980 until 1987, the applicant did not submit evidence from this guardian with his Form I-687

submitted in 2005 or subsequent to that time. The director noted this in his NOID. Though the applicant indicated that both of his parents were alive when he submitted his Form I-687, and though he submitted an affidavit from his father regarding the unavailability of his birth certificate, he did not submit any statements from either of them regarding the events and circumstances of his residence as a minor in the United States.

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.