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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: HOUSTON Date: SEP 23 2008
MSC-05-299-10302

IN RE: Applicant: [Redacted]

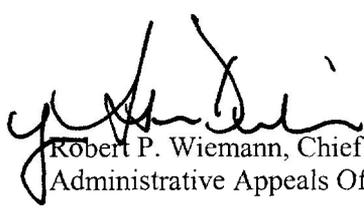
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, Houston. 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant addresses the director's analysis of his evidence and the basis for denial.

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).

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 petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 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 Supplement to Citizenship and Immigration Services (CIS) on July 26, 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 showed his first address in the United States to be at [REDACTED] Houston, Texas from December 1980 until February 1987. At part #33, he showed that during the requisite period he was employed as a helper with Fiesta Auto Mart Parts in Houston, Texas from 1981 until 1986 and in construction with [REDACTED] in Livingston, Texas from October 1986 until December 1988.

The applicant submitted the following documentation:

- A notarized letter from [REDACTED] dated May 10, 2005. This letter provides, “I have known [REDACTED] since 1980, now he lives in Houston, Texas with his family. . . .” This letter fails to establish where [REDACTED] first met the applicant. It is unclear whether [REDACTED] first met the applicant in the United States or abroad. Furthermore, it does not illustrate [REDACTED] relationship with the applicant during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated June 20, 2005. This affidavit provides, “[REDACTED] is a kind person that I have known since 1981. I have come to know [REDACTED] and have concluded that he is one of the most truthful human beings I have come to know. I have great respect for [REDACTED] because he goes the extra mile for his family and friends. . . .” This affidavit fails to establish where [REDACTED] first met the applicant. It is unclear whether [REDACTED] first met the applicant in the United States or abroad. Furthermore, it does not illustrate [REDACTED] relationship with the applicant during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated July 12, 2005. This affidavit provides:

[REDACTED] is a great friend of mine that I have known since 1981. I have come to know [REDACTED] and have concluded that he is one of the most honest human beings I have come to know. I was a manager at Fiesta pick and pull auto parts located on [REDACTED]. [REDACTED] was the maintenance person from October of 1981 to December of 1986. His job titled [sic] consisted of many duties. He would keep the junk yard clean and presentable clients. He would assist in dismantling the vehicles and organizing the parts into their category. He would get paid roughly around \$250 per week. To this day we still keep in touch. [REDACTED] is a hard working individual that always did his job. . . .

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers should include: the applicant’s address at the time of employment; whether the information was taken from official company records; and where the records are located and whether CIS may have access to the records. If the records are unavailable, an affidavit form-letter stating that such records are unavailable and the reason they are unavailable may be accepted. 8 C.F.R. § 245a.2(d)(3)(i)(F). **This affidavit fails to comply with these delineated guidelines.** Therefore, it is of little probative value as evidence of the applicant’s residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from [REDACTED] dated July 6, 2005. This affidavit provides that [REDACTED] has been acquainted with the applicant in the United States since 1983. It further provides that [REDACTED] first met the applicant “At a relatives [sic] house.” There is a note on this affidavit from the adjudication officer that indicates [REDACTED] is the applicant’s cousin. However, the affidavit fails to specify the location of where [REDACTED] first came into contact with the applicant in the United States. It also fails to illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated July 9, 2005. This affidavit provides:

██████████ is a great friend of mine that I have known since 1983. I have come to know ██████████ and have concluded that he is one of the most honest human beings I have come to know. I met him through ██████████ who is my wife at the present time. I met him at the Fiesta food mart located on Wirt Road while I was grocery shopping. ██████████ always visits our house every weekend. He has become like an extension of my family. . . .

This affidavit fails to indicate the exact location of where ██████████ first met the applicant. It is unclear if the location of their first meeting, the Fiesta Food Mart, was located in the United States or abroad. Furthermore, this letter fails to illustrate the frequency of their contact during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from ██████████ dated July 7, 2005. This affidavit provides:

██████████ is a great person that I have known since 1985. I first had the privilege to meet ██████████'s house. We always have gatherings at her house. I met Alejandro at Thanksgiving time when we were all celebrating. It's our tradition to get together for any holiday or family gathering. Since the time I met ██████████ I get to see him about once a week, sometimes more. I have great respect for ██████████ because he goes the extra mile for his family and friends. . . .

There is a note on this affidavit from the adjudication officer that indicates ██████████ address is 290 Freeway. However, it is unclear whether "290 Freeway" is located in the United States or abroad. Furthermore, the affidavit fails to illustrate the type of weekly contact they maintained during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from ██████████, which provides, "I certify that I have known ██████████ since 1984 in HOUSTON, TX., our country. Where we worked together for (4) years." This letter fails to provide the exact dates and location of where ██████████ and the applicant were employed together. There is no indication that they worked together during the requisite period. Furthermore, this letter does not convey how ██████████ first became acquainted with the applicant. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from ██████████ dated June 2, 2005. This affidavit provides that ██████████ has been acquainted with the applicant in the United States since 1985. It states that ██████████ first met the applicant "At a relatives [sic] house." There is a note on the affidavit from the adjudication officer that indicates the applicant met

██████████ in 1985 at ██████████'s house. However, the affidavit fails to specify the location of ██████████'s home. It also fails to illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from ██████████, dated July 1, 2005. This affidavit provides that ██████████ has been acquainted with the applicant since 1987. It states that ██████████ first met the applicant "At a relatives [sic] house." There is a note on the affidavit from the adjudication officer that indicates the applicant met ██████████ in 1987 at ██████████'s house. However, the affidavit fails to specify the location of ██████████ home. It also fails to illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from ██████████, dated July 1, 2005. This affidavit provides that ██████████ has been acquainted with the applicant since 1987. It states that ██████████ first met the applicant "At a family members [sic] house." There is a note on the affidavit from the adjudication officer that indicates the applicant met ██████████ in 1987 at ██████████ house. However, the affidavit fails to specify the location of ██████████'s home. It also fails to illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from ██████████, dated June 28, 2005. This declaration provides:

██████████ is a kind person that I have known since September of 1986. [sic] at the time I was searching for a alternator for my pick up truck. ██████████ worked at Fiesta auto parts, and that was the first time I met him. He was a very kind individual that was able to help right away. After that we became good friends. When I first met ██████████ was working in the construction field. I would remodel homes and do a little roofing. I asked ██████████ [sic] if he wanted to work with me. ██████████ finally started working with me in October of 1986. Hew as a very social individual and was always on time for work. ██████████ got paid around \$250-\$300 per week in cash. . . .

This declaration fails to provide the exact location of where the applicant and ██████████ were employed in the construction field. Furthermore, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers should include: the applicant's address at the time of employment; whether the information was taken from official company records; and where the records are located and whether CIS may have access to the records. If the records are unavailable, an affidavit form-letter stating that such records are unavailable and the reason they are unavailable may be accepted. 8 C.F.R. § 245a.2(d)(3)(i)(F). This declaration fails to comply with these delineated guidelines.

Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated May 10, 2005. This affidavit provides:

[REDACTED] is a great person that I have known since 1980. When he first arrived, he entered through McAllen, Texas. He lived with me and my family until 1987. I can testify that [REDACTED] make an innocent trip in 1985 and on August of 1987. Later that year he decided to apply for amnesty program INS was offering. He ended up going to the INS building located on Fulton Road. He took his completed form, personal documentation translated and proper, money orders to complete his process. After a long wait in line he got the opportunity to finally speak to an officer. After the officer reviewed his case, the officer concluded that [REDACTED] did not qualify. The reason given to Alejandro regarding his denial was that he had traveled outside of the United States during the legalization without INS parole. [REDACTED] made me aware of what was happening to him. . . .

There is a note on this affidavit from the adjudication officer that indicates [REDACTED] is the applicant's cousin. The affidavit indicates that the applicant resided with [REDACTED] after he entered the United States in 1980. However, it does not provide the residential address of where they resided together for seven years. Furthermore, the affidavit does not provide any details on their living arrangement/agreement. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated June 19, 2005. This affidavit states:

I have known [REDACTED] since 1986. I got the opportunity to first meet Alejandro at a family meeting. A really good friend of the family brought him and introduced him to me. He was a very pleasant gentleman that was respectful. We usually get together with friends or with families. He is very out going and fun to be around of [sic]. . . .

There is a note on the affidavit from the adjudication officer that indicates the applicant met [REDACTED] house. However, the affidavit fails to specify the location of [REDACTED] home. It also fails to illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated June 20, 2005. This affidavit provides:

I, [REDACTED] have known and been acquainted with [REDACTED] since 1981. I am aware that he lived here since that date because he lived with my sister [REDACTED]

██████████ made a trip to Honduras in June of 1985 to visit family. In August of 1987 he made a one day trip to Honduras. I would send money for my mom with him. That was a big favor from his part because my mother was too old to go to the Western Union and collect her money. Later that year he decided to apply for the Amnesty program INS was offering. He ended up going to the INS building located on Fulton Road. He took his completed form, personal documentation translated and proper, money orders to complete his process. After the officer reviewed his case, the officer concluded that ██████████ did not qualify. The reason given to ██████████ regarding his denial was that he had traveled outside of the United States during the legalization without INS parole. Alejandro made me aware of what was happening to him, which in result I felt terrible. . . .

This affidavit states that ██████████ is aware of the applicant's residence in the United States since 1981 because the applicant lived with her sister. However, it does not provide the address of where the applicant resided. Furthermore, the affidavit fails to illustrate the frequency of their contact in the United States during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence during the requisite period.

On November 26, 2007, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director stated that CIS attempted to contact the authors of the applicant's supporting statements and found the following:

- ██████████ could not remember when the applicant first entered the United States;
- The phone number for ██████████ belongs to someone else;
- The affidavit from ██████████ does not include his phone number;
- The phone recorder for ██████████ stated someone else's name;
- The affidavit from ██████████ did not include a telephone number;
- The telephone number for ██████████ belongs to ██████████; and
- The remaining affidavits are either lacking telephone numbers or the telephone numbers have been disconnected.

The director noted that the affidavits from ██████████ raise a question about the credibility of the applicant's claim. The director found that these affidavits are contradictory and do not provide information on the applicant's relationship with the affiants. The director determined that the applicant has relied on affidavits that do not meet the basic standards of probative value. The director concluded that the applicant failed to meet his burden of proof to establish that he resided in the United States during the requisite period. The director afforded the applicant 30 days to overcome the grounds for the NOID.

In rebuttal to the NOID, the applicant provided updated phone numbers for the authors of his corroborating statements. The applicant indicated that half of them do not speak English and it is difficult for them to remember events from over 20 years ago. The applicant stated that ██████████

is a distant cousin whom he first met upon his arrival to the United States. That applicant stated that he entered the United States through McAllen, Texas. The applicant stated that was not married to when he first met him.

On May 9, 2008, the director issued a decision to deny the application. The director stated that CIS attempted to contact the authors of the applicant's supporting statements and found the following:

- claims that he first met the applicant in either Honduras or California around 1995;
- Iris Torres stated that she first met the applicant at house during a gathering in 1985;
- stated that she met the applicant around 1985 through her friend Lillie;
- s stated that he first met the applicant around 1985 or 1986 in front of a store. He stated that the applicant is related to his wife, denied that the applicant ever lived with him and his wife. stated that the applicant lived with someone else and visited them once every two to three weeks;
- could not be contacted because he changed his phone number; and
- did not answer the phone calls from CIS.

The director determined that the applicant did not provide a preponderance of the evidence to show that he has been living in the United States prior to January 1, 1982. The director concluded that the applicant failed to overcome the grounds for denial.

On appeal, the applicant asserts that he first entered the United States without inspection in June 1980 and lived with his cousin . The applicant states that when CIS contacted ; he was working and could not concentrate on the officer's questions. The applicant states that his cousin, and the other affiants work early in the morning. The applicant notes that CIS did not attempt to contact . The applicant provides the phone numbers for . The applicant states that CIS should have sent the affiants a letter if they were unreachable by phone.

The applicant's assertions on appeal do not overcome the basis for denial. The applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, twelve statements from his family and friends and two letters from his former employers. The statements from the applicant's family and friends lack considerable detail on the authors' relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. The two letters from the applicant's former employers fail to comply with the regulatory guidelines for employer letters. Therefore, they are

of little probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the totality of the applicant's evidence is at best of little probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible 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.