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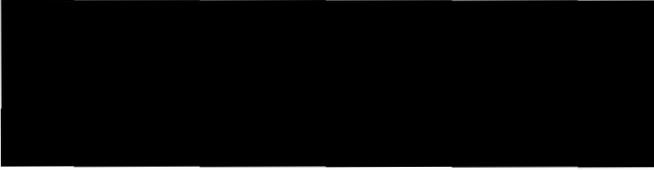
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

IDENTIFICATION COPY

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FILE: [REDACTED]
MSC 06 024 25756

Office: HOUSTON

Date: SEP 25 2008

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

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, Houston. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States during the requisite period. On appeal, counsel submitted additional evidence.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her

burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

On the instant Form I-687, which he signed on September 27, 2005, the applicant stated that, since January 1, 1982, he had been absent only from March to April 1988, and during March 2003. The applicant indicated that he had not otherwise been absent from the United States from January 1, 1982 to September 27, 2005.

The applicant further stated that he lived (1) at [REDACTED] from October 1981 to 1985, (2) at [REDACTED], Texas from 1986 to 1988, and (3) at 2411 FM 1960 in Houston, Texas from 1988 to 1991.

The applicant was required, at Item 33 of the Form I-687 application, to list all of his U.S. employment since his first entry. As part of that employment history the applicant stated that he worked (1) for Presidential Sweep in Houston, Texas as a laborer from October 1981 to 1985; (2) for Bermea Drywall Contractors in Eagle Pass, Texas as a laborer from 1985 to 1988; and (3) for Flores Remodeling Contractors in Eagle Pass, Texas as a laborer from 1988 to 1990.

The applicant has stated that, from 1981 through 1991, he lived in Houston, Texas. The applicant has also stated that, from 1985 to 1990 he worked in Eagle Pass, Texas. This office notes that the distance from Eagle Pass to Houston exceeds 300 miles. The record contains no explanation of this apparent discrepancy, which calls into question the accuracy of the information the applicant has provided.

The pertinent evidence in the record is described below.

- The record contains a Form I-485 that the applicant signed on May 28, 2002. On that form the applicant stated that three of his children were born in Mexico, on [REDACTED]. This office notes that, unless the mother of the applicant's children had been in the United States approximately nine months prior to those births, one would suspect that the applicant was necessarily outside of the United States approximately nine months before each of those births.

The record also contains notes taken by a CIS officer during an October 3, 1991 interview of the applicant. The officer indicated, *inter alia*, that the applicant stated that he attempted to apply for Legalization but was rejected, and stated that his wife had been in the United States, but left during 1986. The applicant's wife's absence during some portion of 1986 and all of 1987, and the birth of the applicant's child in Mexico on [REDACTED] seems inconsistent with the applicant's claim that he never left the United States from January 1, 1982 March 1988.

- The record contains a G-325A, Biographic Information form that the applicant signed on May 28, 2002. On that form the applicant indicated that he lived at [REDACTED] in Houston, Texas, from May 1991 to September 2001, and lived at [REDACTED] also in Houston, from September 2001 until at least May 28, 2002, when he signed that form.

The applicant's account of his residential history on that Form G-325A differs from the history he gave on the instant Form I-687 application. As was noted above, on the Form I-687, the applicant stated that he moved from [REDACTED] both in Houston, Texas, during 1999, rather than during September of 1991.

The period of requisite residence ended no later than May 4, 1988. As such, the applicant's residential history during subsequent years is not directly relevant to the applicant's eligibility. His misstatement of his residential history, however, reflects on the all of the applicant's assertions.

- The record contains a letter dated August 12, 1991 from [REDACTED] of the Presidential Sweep janitorial company of Houston, Texas. That letter states that the applicant worked five days per wee for Presidential Sweep from October 1981 through April 1985 and was paid in cash.
- The record contains a letter, dated September 1, 1991, from [REDACTED] owner of the Bermea Drywall Contractor Company of Eagle Pass, Texas. That letter states that the applicant worked for that company from May 1985 to February 1988.
- The record contains a notarized letter, dated August 12, 1991 from [REDACTED] Remodeling Contractors of Houston, Texas. That letter states that the applicant worked for that company as a carpenter's helper from May 1988 to December 1990 and was paid in cash. Although the letter is dated August 12, 1991, the notary's attestation indicates that it was subscribed and sworn before the notary on August 14, 1991.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) requires that employer verification letters must state the applicant's address at the time of employment, identify the exact period of employment, and show periods of layoff. The verifying employer must also declare whether the information was taken from company records, identify the location of such company records, and state that such records are accessible, or, in the alternative state the reason why such records are unavailable.

The letters from Presidential Sweep, Bermea Drywall Contractor Company, and [REDACTED] do not comply with the requirements of the governing regulation. Those letters will be considered, pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), but will not be accorded as much evidentiary weight as they would have had they complied with the regulations.

- The record contains an affidavit, dated August 4, 1991, from [REDACTED] the applicant's stepbrother. [REDACTED] stated that the applicant lived with him (1) from October 1981 to December 1985 at [REDACTED] in Houston, Texas; and (2) from January 1, 1986 to February 1988 at [REDACTED], in Spring, Texas. Mr. [REDACTED] further stated that he and the applicant split the rent and utility bills, but that the apartments were in his name.
- The record contains a form affidavit dated August 14, 1991 from [REDACTED] of Spring, Texas. [REDACTED] stated that she has known the applicant since November of 1981, when the applicant lived at [REDACTED] in Houston, Texas. The affiant stated that she had weekly contact with the applicant.
- The record contains a form affidavit dated September 19, 1991 from [REDACTED] of Spring, Texas. [REDACTED] stated that he has known the applicant since October 1981 and had bi-weekly contact with him. [REDACTED] did not state when or whether the applicant has lived in the United States.
- The record contains a form affidavit dated May 20, 1991, from [REDACTED] of Houston, Texas. The affiant stated that he met the applicant at church in December 1981, at which time he lived at [REDACTED], in Houston, Texas. The affiant stated that he saw the applicant on a weekly basis.
- The record contains photocopies of [REDACTED] Income forms for 1982 and 1983. Although those photocopies are largely illegible, they appear to show that the applicant worked for Presidential Sweep during those years.

Although the employment verification letter from [REDACTED] claims that the applicant worked for Presidential Sweep five days per week throughout 1982 and 1983, the 1982 Form 1099 shows payment of \$3,486, which equates to less than \$70 per week, assuming year-round employment, or \$14 per day. The 1983 Form 1099 shows payment of \$3,896, which equates to less than \$75 per week, or less than \$15 per day. Those 1099 forms are poor evidence of the year-round employment the applicant claims.

- The record contains a photocopy of what purports to be the applicant's 1985 personal income tax return. That return shows that the applicant earned \$6,438 during that year, as evidence of which the applicant was instructed to attach a Form W-2, Wage and Tax Statement. No W-2 form, nor any similar evidence of money received during that year, accompanied that photocopy.
- The record contains a 1988 Form 1099-R, Total Distributions from Profit-Sharing, Retirement Plans, Individual Retirement Arrangements, Insurance Contracts, Etc., showing that Flores Remodeling paid the applicant a gross distribution of \$68 during that year. The applicant claims to have worked for Flores Remodeling during that year. The record provides no reason that Flores Remodeling would have been paying the applicant a distribution from profit-sharing, retirement, *et cetera*.
- The record contains a form affidavit, dated April 29, 2007, from [REDACTED] Mr. [REDACTED] stated that he met the applicant at a soccer field in 1983 and has known him since. That affidavit does not state when or whether the applicant lived in the United States during the period of requisite residence.
- The record contains a declaration, dated May 16, 2008, from [REDACTED] In it, she stated that he has known the applicant since 1981, but did not state when or whether the applicant resided in the United States.

That declaration was stamped and subscribed by a notary. The notary did not attest, however, that the declaration was signed and sworn before her. That notary's subscription does not, therefore, convert the declaration into an affidavit or otherwise contribute to its evidentiary value. Further, that an ostensible notary is unfamiliar with the standard notary's attestation applicable to an affidavit or other sworn statement suggests that the person who signed and stamped that declaration is not, in fact, a notary. Because of the irregularity in the notary's subscription, that declaration will be accorded minimal weight.

- The record contains an affidavit dated May 29, 2008 from [REDACTED], who stated that he has known the applicant since 1981. A photocopy of a Texas driver's license submitted with that affidavit indicates that the affiant lives in Tomball, Texas. The affiant did not state when or whether the applicant has lived in the United States.
- The record contains an affidavit dated April 28, 2007 from [REDACTED] of Houston, Texas. [REDACTED] stated, "I first met [the applicant] when he started cutting my yard in 1981 and he continues to work for us till [sic] present."

¹ Although the affiant's name is stated as [REDACTED] on the affidavit, an appended photocopy of his driver's license reveals that his name is [REDACTED]

- The record contains an affidavit dated April 30, 2007 from [REDACTED] of the same address and phone number as [REDACTED]. [REDACTED] stated that she has known the applicant from December 1981, when he started cutting her lawn, to the present.

The letters from [REDACTED] do not state how often the applicant cut their lawn, whether he cut it year-round, or whether any periods of time passed when the applicant was unavailable. As such, they contain no indication that the applicant continuously resided in the United States. In addition, those affidavits indicate that the applicant has worked in lawn service since 1981. On the instant Form I-687, however, where the applicant was required, at Item 33, to list all of his past and present employment in the United States, the applicant indicated that he worked for a janitorial service from October 1981 to 1985, for a drywall contractor from 1985 to 1988, and for another building contractor from 1988 to 1990. The applicant's first claim of employment in landscaping or lawn service was in 1991.

Because they contradict by the applicant's own account of his employment history, the affidavits of [REDACTED] will be accorded minimal evidentiary weight. Further, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The record contains a form affidavit dated April 29, 2007 from [REDACTED]. In it, Mr. [REDACTED] stated that he met the applicant at a soccer field at Cullen Park² in 1982. A preprinted portion of that affidavit states, "To the best of my knowledge, the applicant has never broken their [sic] continuous residence in the United States." The record contains a letter in Spanish and an English translation, dated May 29, 2008, also from [REDACTED], in which he reiterated that, because of their association in soccer, he has known the applicant since the end of 1982.
- The record contains a letter in Spanish and an English translation, dated May 25, 2008, from [REDACTED] of Houston, Texas. [REDACTED] stated that he has known the applicant since 1981 when the applicant was living at [REDACTED] in Houston, Texas. She did not further detail his residential history during the period of requisite residence.
- The record contains an affidavit, dated April 29, 2007, from [REDACTED] of Spring, Texas. The affiant stated that he met the applicant on the beach in Galveston, Texas during 1981 and that they have since been friends.

² This office notes that Cullen Park is in Houston, Texas.

The record contains an affidavit executed by the applicant on July 2, 2008. In his affidavit the applicant stated that he realizes that the instant record contains many contradictions, but asserted that the information provided on the instant I-687 is correct. The applicant did not otherwise address the contradictions in the record. This affidavit did not, therefore, resolve any of the discrepancies in the record.

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

In a Notice of Intent to Deny (NOID), dated April 9, 2007, the director noted that the affidavits previously submitted did not contain telephone numbers, and are therefore unverifiable. She further stated that Presidential Sweep and Bermea Drywall were not listed in the telephone directory during the time when the applicant claims to have worked for them.³ The director found that, in view of the discrepancies in the record, the applicant failed to establish his continuous residence.

In response, counsel submitted the April 29, 2007 form affidavit of [REDACTED] the April 29, 2007 form affidavit of [REDACTED] and the applicant's own sworn statement, dated April 30, 2007.

The applicant stated that he had attempted to contact some of his old friends and even relatives, but was unsuccessful. He further stated that he signed the October 3, 1991 statement under duress, without further detailing that duress, and that some of what he said was misrepresented, without further detailing what was misrepresented and what the truth of that matter is. Finally, the applicant provided a new telephone number for [REDACTED]. The new number provided for [REDACTED] was found to be out of service when an attempt was made to contact him on May 6, 2008.

In the Notice of Denial, dated May 8, 2008, the director found that given the unresolved discrepancies the record the applicant had failed to demonstrate that he continuously resided in the United States during the requisite period.

On appeal, counsel submitted the May 16, 2008 declaration of [REDACTED] the May 8, 2008 affidavit of [REDACTED] the April 20, 2007 form affidavit of [REDACTED] the April 28, 2007 form affidavit of [REDACTED] the April 29, 2007 form affidavit of [REDACTED] the May 28, [REDACTED], the May 25, 2008 letter of [REDACTED] and the applicant's own July 2, 2008 affidavit, all of which are described above. Counsel submitted no argument on appeal.

³ The director did not include evidence in support of her assertion that the applicant's alleged employers were not listed in the appropriate telephone directories when he claimed to have worked for them. Further, this office does not have access to historical data pertinent to Houston area telephone directories. This office will not rely, even in part, on the assertion that the applicant's alleged former employers were not listed in the appropriate telephone directories when he allegedly worked for them.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The record contains various discrepancies, including (1) the conflict between the applicant's statement that he never left the United States from January 1, 1982 and March 1988 and his statement that a child was born to him in Mexico on October 27, 1987, and (2) the conflict between the applicant's two versions of his residential history.

On appeal, the applicant has attempted to reconcile those discrepancies by stating that the assertions and the evidence that tend to support his eligibility, are correct, whereas the assertions and evidence that tend to demonstrate ineligibility are incorrect. This is not the independent objective evidence that is contemplated by *Matter of Ho*, 19 I&N Dec. 582. The applicant has not, therefore, satisfactorily reconciled the discrepancies. All of the applicant's statements are therefore deemed unreliable, and the weight to be accorded his evidence is greatly reduced.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

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