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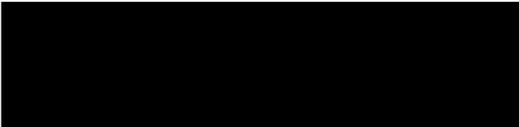
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-131-10742

Office: LOS ANGELES

Date: DEC 06 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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. 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 asserts that he has continuously resided in the United States for the duration of the requisite period. He states that he is submitting evidence to corroborate affiant [REDACTED] statement, and was unable to obtain evidence from other affiants because they have moved out of state. He submits one (1) affidavit from [REDACTED] and evidence of her presence in the United States in support of his claim.

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)(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).

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.* 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. See 8 C.F.R. § 245a.2(d)(6).

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and the Form I-687 Supplement, CSS/Newman Class Membership Worksheet submitted by the applicant to Citizenship and Immigration Services (CIS) on February 8, 2005. At part [REDACTED] application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States to be the following: [REDACTED] California, from October of 1981 to November of 1983; [REDACTED] Los Angeles, California, from November of 1983 to December of 1986; and [REDACTED] California from January of 1987 to December of 1993. At part #31 of the

Form I-687 application where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "NONE." Similarly, at part #33 of the Form I-687 application, the applicant showed his first employment in the United States to be as a gardener at [REDACTED], Ontario, California, from November of 1981 to December of 1985; and at Swirlon Industries in Baldwin Park, California, as an assembler from January of 1986 to December of 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation that is relevant to the requisite time period: including copies of his California Driver's License, his application for his Los Angeles, California, marriage record, his daughter's birth certificate from Los Angeles County, California, postmarked letters, payroll statements from Clyde Industries America, Inc. and Swirlon Industries, Inc., a statement from the Social Security Administration listing the years the applicant has worked in the United States, money order and retail receipts, a letter of employment from Swirlon Industries, Inc., and Internal Revenue Service tax documents. Though these documents show that the applicant was present in the United States from 1984 until 1988, they are not sufficient to establish that he continuously resided in the United States from prior to January 1, 1982, until 1984.

It is noted that the applicant has submitted other evidence for years subsequent to the requisite period. However, the issue in this proceeding is whether the applicant has established his residence in the United States during the requisite period; and therefore, such evidence is non-evidentiary and will not be considered in determining the applicant's eligibility for the benefits sought.

In an attempt to establish his continuous unlawful residence in this country prior to January 1, 1982, the applicant provided the following affidavits:

- A residency affidavit from [REDACTED] in which he stated that the applicant resided with him at [REDACTED] Los Angeles, California, from January of 1985 to March of 1987. The affiant also stated, "I was the one named on the rental contract and thus no receipts are in his name [as well as] all the utility bills [being] under my name exclusively." The affiant concludes by stating that the applicant helped with his share of the rent and utility cost. This statement is inconsistent with the applicant's statement on Form I-687, at part #30 where he was asked to list all residences in the United States since first entry, and he in-turn indicated that he resided at [REDACTED] Los Angeles, California, from November of 1983 to December of 1986. It is noted that the applicant indicated on his Form I-687, at part #33 submitted in 1990, and which is a part of this record, that he resided at the above named address from January 1, 1984 to November 1, 1986. The affiant's statement under oath further conflicts with the rent receipts submitted by the applicant which indicate that the applicant paid rent to [REDACTED] from January of 1984 to September of 1984. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. Because of its significant lack of detail and because it conflicts with other evidence in the

record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

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

- A residency affidavit from [REDACTED] in which he stated that the applicant resided with him at [REDACTED] Los Angeles, California, from October of 1981 to December of 1984. This statement is inconsistent with the applicant's statement on Form I-687, at part #30 where he was asked to list all residences in the United States since first entry, and he indicated his first address in the United States to be at [REDACTED], Los Angeles, California, from October of 1981 to November of 1983. It is further noted that the applicant indicated on his Form I-687 that he resided at [REDACTED], Los Angeles, California, in 1984. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. Because of its significant lack of detail and because it conflicts with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.
- An employment affidavit from [REDACTED] in which he stated that the applicant worked for him as a gardener at [REDACTED] Ontario, California, from November of 1981 to December of 1985, and that the applicant was paid in cash. Although this employment letter shows employment that is consistent with what the applicant showed on his Form I-687, it does not pertain to the duration of the requisite period. There has been no corroborating evidence submitted, such as official company records, company payroll rosters, certification of the filing of federal income tax returns or certification of the filing of state income tax returns, to substantiate the affiant's claim. Furthermore, [REDACTED] has failed to provide any direct and specific testimony, such as the applicant's address(es) of residence in the United States during the time when the applicant was employed by the affiant. The affiant fails to provide a company name, and fails to specifically indicate whether [REDACTED], Ontario, California, was the business address or a customer's location. There is insufficient information contained in the affidavit to determine whether the applicant's employment as a gardener was seasonal, or whether there were any layoff periods during his employment. 8 C.F.R. § 245a.2(d)(3)(i). The applicant has not provided evidence that he herself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because this affidavit is significantly lacking in detail and because it is not

amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter of employment dated July 3, 1990, from [REDACTED] in which she stated that the applicant was initially hired by Clyde Industries America, Inc. in June of 1986 and worked for the company until September of 1986, when he was laid off due to lack of work. She further stated that the applicant was rehired by [REDACTED] on May 14, 1987, and worked for the company until May 1, 1989, at which time the company was bought by [REDACTED]. She concluded by stating that the company has employed the applicant since May 1, 1989. This statement is inconsistent with the applicant's statement on Form I-687, at part #33 where he indicated that he had been employed by Swirlon Industries, Inc. from January of 1986 to December of 1990. This inconsistency calls into question the company representative's ability to confirm that the applicant resided in the United States during the requisite period. Because this letter contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. Because the employment letter conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she is a citizen and permanent resident of the United States, that she has known the applicant since before 1982, and that they met at, and both attended the Resurrection Church of the Los Angeles Catholic Archdiocese. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "NONE." This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Although the affiant states that she has known the applicant since before 1982, she fails to specify when they met, under what circumstances they met, and how long they have maintained an acquaintance. The affiant further stated that she and the applicant lived in the same area in Los Angeles, California, and that she saw each other often. However, she does not specify the frequency with which she saw the applicant, nor does she provide specific dates during which she and the applicant were neighbors. The applicant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of her identity with this affidavit. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. Because of its significant lack of detail and because it conflicts with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he is a citizen of the United States, that he has known the applicant since October of 1982, and that he would be happy to provide additional information, if required. However, the affiant has failed to provide contact information. Here, the affiant fails to indicate how he met the applicant, where he met the applicant or whether he met him in the United States. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this affidavit. Although Mr. [REDACTED] attested to the applicant's residence in this country since October of 1982, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he is a legal resident of the United States, that he has known the applicant since 1983, and that the applicant has been a good and responsible person, a hard worker, and a family man. Here, the affiant fails to specifically state when he met the applicant, where he met the applicant, under what circumstances he met the applicant, and whether he met him in the United States. The affiant has failed to provide contact information. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this affidavit. Although Mr. [REDACTED] attested to the applicant's residence in this country since 1983, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant in the United States since before 1981, when he was residing at [REDACTED], Los Angeles, California. Here, the affiant fails to specifically state when she met the applicant or where she first met the applicant. She further stated that she met the applicant through mutual friends. However, she fails to indicate the name of the mutual friends. The affiant stated that she and the applicant attended church together, and that they became friends. This statement is inconsistent with the information provided by the applicant on his Form I-687, where he didn't list any affiliations or associations with any churches. The affiant stated that she and the applicant have maintained a friendship and see each other often now that the applicant has moved close to her home. Nevertheless, the affiant does not specify the

frequency with which she sees the applicant. She concludes by stating that to the best of her knowledge, the applicant has continuously resided in the United States since before 1982, and that he is a person of good moral character. In this instance, the affiant has not provided evidence that she herself was present in the country during the requisite period. Though not required to do so, she has not provided proof of her identity with this affidavit. Because this affidavit is significantly lacking in detail and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted copies of numerous handwritten rent receipts for the years 1981, 1982, and 1983, during which time he allegedly resided at [REDACTED] Los Angeles, California, and [REDACTED] [REDACTED] respectively. The record of proceedings shows that the rent receipts were manufactured by the Rediform Corporation, and that the company logo contained on the receipts that were submitted by the applicant was not copyrighted until 1984. Thus, bringing into question the authenticity of the information written on the rent receipts. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Because the handwritten rent receipts do not appear to be authentic, very minimal weight can be afforded to them in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the printout from the Social Security Administration listed the applicant's earnings starting only from 1987 through 2003. The director also noted that the affidavits submitted did not contain specific information pertaining to the applicant's entry into or residences in the United States prior to 1982, and that there had been no corroborating evidence submitted to substantiate the affiant's assertions.

On appeal, the applicant states that he is submitting evidence to corroborate affiant [REDACTED] statement, and was unable to obtain evidence from other affiants because they have moved out of state. He resubmits the one (1) affidavit from [REDACTED] along with evidence of her presence in the United States in support of his claim.

The record contains copies of [REDACTED] food stamp verification letters, rent receipts, utility bills, IRS Form W-2, Wage and Tax Statements, and IRS Form 1040, U.S. Individual Income Tax Returns, all dated from 1970 through 1979. The record also contains copies of Ms [REDACTED] IRS Form W-2, Wage and Tax Statements, IRS Form 1040, U.S. Individual Income Tax Returns, and IRS Form 1099, MISC, for the 1980, 1981, 1982, 1983, 1984, and 1986 tax years. Although the applicant has demonstrated on appeal, Ms Guerra's presence in the United States during the above noted years, this information is insufficient to establish the applicant's residence during the requisite period. Neither is this information sufficient to overcome the numerous discrepancies and inconsistencies found in the record.

On appeal, the affiant has failed to specifically state when she met the applicant or where she first met the applicant. She states that she knew the applicant when he resided at [REDACTED], Los Angeles, California, but failed to provide all other addresses where the applicant resided during the requisite time period. The affiant fails to indicate the name of the mutual friends who allegedly introduced her to the applicant. Although the affiant stated that she and the applicant attend church together, there has been no statement made or evidence produced on appeal to circumvent the inconsistencies found in the information provided by the applicant on his Form I-687, where he didn't list any affiliations or associations with any churches. The affiant stated that she and the applicant have maintained a friendship with each other. Nevertheless, she does not specify on appeal the frequency with which she sees the applicant. Because this affidavit is significantly lacking in detail and because it is in conflict with statements made by the applicant on his I-687, it cannot be accorded sufficient weight to establish that the applicant resided in the United States during the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to before January 1, 1982 through 1983, and has submitted attestations from seven (7) people concerning the requisite time period, the totality of which were not sufficient evidence to prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.