

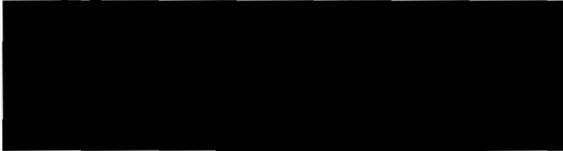
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-231-13238

Office: LOS ANGELES

Date: **MAY 28 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: SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Resident Status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that in the letter the applicant submitted in response to her Notice of Intent to Deny (NOID), he asserted that he left the United States to go to Mexico in 1987 to visit his father who was ill. However, the applicant's Form I-687 indicates that the applicant's father passed away in 1983. She further noted that the applicant showed on his Form I-687 that his only absence from the United States occurred in 1985. Because of these inconsistencies, the director found that the applicant had not met his burden of establishing that he was eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and she denied his application.

On appeal, the applicant submits a brief in which he attempts to account for inconsistencies regarding his absence from the United States.

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 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 or her 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 May 19, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] in Tujunga, California from 1980 until 1985; and [REDACTED] in Los Angeles, California from 1985 until 1994. At part #32 where the applicant was asked to list his absences from the United States since he first entered, he indicated his only absence from the United States was from September 1985 until August 1985. The AAO notes that there appears to be an error in this section as the end date of this absence is shown to be the month before it began. At part #33 where the applicant was asked to list his employment in the United States since he first entered, he showed that during the requisite period he was employed by [REDACTED] in Los Angeles as a machine operator from 1981

until 1991. It is noted that he indicated he did not know the street address of this place of employment.

Also in the record is a record of sworn statement in affidavit form that was signed by the applicant at the time of his interview with a Citizenship and Immigration Services (CIS) officer on February 1, 2006. It is noted that this statement is written in Spanish. If translated into English, this statement would read approximately as follows: "I, [REDACTED] entered the United States in 1980. I did not go to an immigration office during the time of the amnesty 1987-1988 to gather information."

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).

In support of his application the applicant submitted the following:

- An affidavit from [REDACTED] that is notarized and dated April 27, 2005. Though he is not required to do so, the affiant submits a photocopy of his California Driver's License and his Permanent Resident Card as proof of his identity. Here, the affiant states that he personally knows that the applicant resided at [REDACTED] in Los Angeles from June 1984 until December 1988. It is noted here that on the applicant's Form I-687 he indicated that he resided in Tujunga, California until 1985 and then on [REDACTED] in Los Angeles from 1985 until 1994. The residences that this affiant states the applicant resided at are not consistent with what the applicant showed on his Form I-687, casting doubt on whether the applicant resided in the United States during the requisite period.
- A letter from [REDACTED], the president of Valley Plating Works in Los Angeles that is dated February 5, 2001. In this letter, [REDACTED] states that the applicant worked for his company from 1991 until [REDACTED] signed the letter. He went on to say that the applicant worked for him for a short time in 1983. However, he stated there are no records available to confirm these dates of the applicant's employment.
- A notarized letter from [REDACTED] that is dated April 22, 2005. Here, the declarant states that he has known the applicant since 1981. He attests to the applicant's

character and provides his telephone number. Though he is not required to do so, he submits a photocopy of his California Driver's License with this letter as proof of his identity.

An affidavit from [REDACTED] that is notarized and is dated May 9, 2005. Here, the affiant states that he knows that the applicant resided in the United States at [REDACTED] in Los Angeles, California from January 1981 until 1993. He states that he has seen the applicant every month. It is noted here that this address the affiant stated the applicant resided at during the requisite period is not consistent with an addresses of residence the applicant showed he resided at during that time on his Form I-687.

- An affidavit from [REDACTED] who indicates she is a housewife. This affidavit is notarized and is dated April 27, 2005. Though she was not required to do so, the affiant submitted a photocopy of her California Identification Card as proof of her identity. It is noted that the applicant indicated he was employed by an [REDACTED] as a machine operator for the duration of the requisite period on his Form I-687. Here, the affiant states that she personally knows that the applicant resided on [REDACTED] in Los Angeles from January 1981 until June 1982; on [REDACTED] in Los Angeles from June 1982 until December 1984; at [REDACTED] from December 1984 until December 1988. It is noted that these addresses of residence are not consistent with what the applicant showed on his Form I-687.

Photocopies of envelopes mailed from the applicant as follows:

- A photocopy of an envelope mailed by the applicant who indicates a return address of [REDACTED] in San Luis Obispo, California that is postmarked July 8, 1983. It is noted that the applicant did not ever indicate that he resided in San Luis Obispo on his Form I-687.

A photocopy of a letter sent by the applicant who again indicated his return address as being on [REDACTED] in Los Angeles. The postmark date on this envelope is August 5, 1983. It is noted that the applicant did not indicate that he ever resided on [REDACTED] on his Form I-687.

A photocopy of an envelope mailed by the applicant who indicates the return address is on [REDACTED] in Los Angeles, California. The postmark date on this envelope is August 15, 1983. It is noted here that the applicant indicated he resided in Tujunga, California in 1983 on his Form I-687.

- A photocopy of an envelope mailed by the applicant who indicates the return address is on [REDACTED] in Los Angeles, California. The postmark date on this envelope is August 27, 1983. It is noted here that the applicant indicated he resided in Tujunga, California in 1983 on his Form I-687.

Here, the applicant has not submitted any document that shows an address of residence for him during the requisite period that is consistent with where he showed he resided on his Form I-687. Because he has not produced any evidence that confirms his claimed addresses of residence during that time, doubt is cast of whether the applicant resided in the United States during the requisite period.

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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

It is noted her that the applicant also submitted the following for years subsequent to the requisite period: tax documents; Western Union receipts; gas bills; earning statements; and employment verification letters. The issue in this proceeding is whether the applicant continuously resided in the United States for the duration of the requisite period, which began on a date prior to January 1, 1982 and ended on the date the applicant attempted to file for legalization during the original filing period which was between May 5, 1987 and May 4, 1988. Because these documents do not pertain to the requisite period, they are not relevant evidence for this proceeding.

The director issued a NOID to the applicant on February 2, 2006. In her NOID, the director stated that at the time of the applicant's interview with a CIS officer on February 1, 2006, he indicated that he did not visit an office of the former Immigration and Naturalization Services (INS) or a Qualified Designated Entity (QDE). Here, the director refers to the previously noted sworn statement in which the applicant stated he did not go to an immigration office from 1987 to 1988. However, it is noted here that the applicant did not assert that he did not visit a QDE in his statement. The director informed the applicant that she intended to deny the applicant based on her determination that he was not a class member.

In response to the Director's NOID, the applicant submitted a rebuttal dated February 24, 2006. Here, the applicant states that he did visit an INS office during the original legalization period. He goes on to state that he departed the United States for Mexico in September 1987 to attend to his father's serious illness. He states that he intends to produce medical records from Mexico that will confirm the dates of his father's illness. He further states that the officer who interviewed him would not allow him to bring the interpreter that he had brought with him into his interview. He states that because of this, the officer conducted the interview in broken Spanish. He asserts that this caused confusion during the interview.

The director denied the applicant on September 8, 2006. In her decision she stated that on the applicant's Form I-687 he indicated that his only absence from the United States was from August to September 1985 rather than September 1987. She goes on to say that this form also indicates that his father died in 1983, casting doubt on the credibility of the applicant's statement that he visited his father who was ill in September 1987. Because of these inconsistencies the director stated that the applicant failed to prove by a preponderance of the evidence that he resided in the United States for the duration of the requisite period.

On appeal, the applicant asserts that his only absence from the United States was in September 1987. He explains that the purpose of his travel was to visit his very sick mother rather than his very sick father. He explains that there was a mistranslation that caused this error.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for six affidavits, not one of which shows an address of residence that he showed on his Form I-687. He has provided inconsistent assertions regarding the dates associated with and reason for his absence from 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.