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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 10 2007

MSC-05-197-13501

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. 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, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director noted in her decision that the applicant failed to meet his burden of proving, by a preponderance of the evidence that he continuously resided in the United States for the duration of the requisite period. In saying this, the director stated that the applicant failed to respond to a Form I-72 Request for Evidence which requested him to provide proof of affiants' [redacted] identities and proof that each resided in the United States since before 1982. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the CIS officer who interviewed him with regards to his Form I-687 application did not attempt to contact the affiants to verify information provided in their affidavits. He submits a brief stating that the affiants from whom he submitted affidavits were physically present during the requisite period. He submits affidavits in support of his claim of having maintained continuous residence for the duration of the requisite period.

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 (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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).

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 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 from 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 15, 2005. At part #19 where the applicant was asked to list his mother's name and indicate whether she was living or deceased, he showed that her name was [redacted] and that she died in 1987. 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 first and only address in the United States

during the requisite period to be [redacted]-California from May of 1981 to July of 1992. At part #32, where the applicant was asked to indicate all of his absences from the United States since January 1, 1982, he showed one absence from August 5, 1987 to August 23, 1987 when he went to Mexico because his mother died. At part #33 where the applicant was asked to provide information regarding his employment since first entry, he indicated that during the requisite period he was first employed by [redacted] doing landscaping work from May of 1981 until March of 1987. He then showed that he worked for [redacted] doing auto repair work from June of 1981 to February of 1987. The last employment he showed during the requisite period was working for [redacted] doing construction work from March of 1987 to November of 1994.

The record also contains a Form I-687 submitted by the applicant to establish class membership in 1993. Part #20 of this application asks the applicant to list his mother's name and whether she is living or deceased. Here, the applicant showed that his mother's name is [redacted] and that she died in 1989. It is noted that the year of death the applicant showed in this application is not consistent with what he showed on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements. The applicant's address of residence during the requisite period is listed consistently with what he showed on his subsequently filed Form I-687. At part #35 where the applicant was asked to list all of his absences since January 1, 1982 he showed two absences. The first absence was from August 5 to August 23, 1987 when he went to Mexico to visit a sick relative and the second absence was from September 18, 1989 to October 5, 1987 [sic] when he indicates he went to Mexico because his mother had passed away. It is noted that this is not consistent with the absences the applicant showed on his Form I-687 where he only showed one absence and indicated that his mother passed away and that he then went to Mexico because of that in August of 1987. At part #36 where the applicant was asked to list his employment since he entered the United States, he showed that his first employment was at an auto body shop in Los Angeles from June of 1981 to February of 1987. He then showed that he worked for Avcorp Construction from March 1987 until the date he signed this Form I-687 in 1993. It is noted that the dates and address associated with this employment are consistent with what the applicant showed on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements where he showed that he was employed doing landscaping work while he was also employed doing auto repair work.

That the applicant was not consistent showing his dates of absences on his two Forms I-687 casts doubt on whether he fully and completely listed all of his absences on either of those documents.

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).

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 an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided documentation, mostly in the form of affidavits and letters. Details of evidence submitted in support of the applicant's claim of having maintained continuous residence in the United States during the requisite period are as follows:

- An affidavit from [redacted] signed on January 26, 1994 stating that the applicant went to Mexico from August 5 to August 23, 1987 to visit a sick relative. It is noted that the applicant indicated on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements that he went to Mexico on those dates, but that he did so because his mother passed away. Therefore, this letter is found to be inconsistent regarding the purpose of the applicant's absence from the United States.

- An affidavit from [redacted] that was notarized on January 14, 1994 stating that he personally knows that the applicant resided at [redacted] from May of 1981 until July of 1992. This affiant fails to describe the nature of his relationship with the applicant. He does not describe how he personally knows that the applicant lived at this address. Further, although not required to do so, he does not provide proof of his identity or documentation that establishes that he was physically present in the United States for the duration of the requisite period. This letter is found to be significantly lacking in detail and therefore is afforded limited weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- An employment verification letter from [redacted] notarized July 13, 1993 that states that the applicant was employed by him at Oro Body Shop from June of 1981 until February of 1987. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part that

letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, this employment verification letter is found lacking as it is not on company letterhead, does not provide periods of layoff, fails to indicate specific duties performed by the applicant and fails to describe whether information regarding dates of employment was taken from official company records. Therefore, this letter can only be afforded minimal weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- An affidavit from [redacted] stating that the applicant was employed by him doing construction work from March of 1987 and continued to be employed by him on August 12, 1993 when he signed the affidavit. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, this employment verification letter is found lacking as it is not on company letterhead, does not provide periods of layoff, fails to indicate specific duties performed by the applicant and fails to describe whether information regarding dates of employment was taken from official company records. Therefore, this letter can only be afforded minimal weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- A residence verification letter from [redacted] notarized on July 13, 1993 stating that the applicant was his tenant at [redacted] until July of 1992.

- A second residence verification letter from [redacted] notarized on October 29, 2005 that also states that the applicant was his tenant at [redacted] 10, 1981 until July of 1992. This letter was submitted with Forms 1040 from 1977, 1979, and 1980 submitted as proof that [redacted] was physically present in the United States before 1982. Although not required to do so, [redacted] submitted a copy of his California State Driver's license as proof of his identity. Here, although not required to do so, [redacted] does not offer evidence that he owns this address of residence or that he collected rent from the applicant. This is significant because this address of residence is the same address as that provided by the applicant as the address of the auto body shop operated by [redacted] at which the applicant claims to have worked during the requisite period.

- An affidavit from [redacted] stating that it is personally known to him that the applicant lived a[redacted] for the duration of the requisite period. The affiant failed to include information regarding when he became acquainted with the applicant or to indicate how it is personally known to him that the applicant resided at this address. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period. As a result of the lack of detail provided in this affidavit, it is afforded only limited weight.

- An affidavit from [redacted] who states that he met the applicant in May of 1981 when the applicant was living in a room at La Luz del Mundo church. He describes the circumstances under which he met the applicant. It is noted that the applicant has indicated that he has been a member of the "Light of the World" church, which is what the name of this church translates to in English, on his Form I-687 filed pursuant to the CSS/Newman Settlement Agreements. Here, he shows he has been a member since May of 1981. However, it is also noted that in part #34 of the applicant's form I-687 filed to establish class member ship in 1993 he indicated that he was not a member of a church. Though this affiant does provide details regarding how he knows the applicant was physically present in the Untied States, he does not state the frequency with which he saw the applicant in the United States for the duration of the requisite period. Therefore, this affidavit is found to be insufficiently detailed to confirm the applicant's residence for the duration of the requisite period.

- An employment verification letter from [redacted] that was notarized on October 28, 2005. This letter states that the applicant worked for him from May of 1981 to March of 1987 doing landscaping work. Though not required to do so, [redacted] has provided a photocopy of his driver's license as proof of his identity. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information

was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, this employment verification letter is found lacking as it is not on company letterhead, does not provide periods of layoff, fails to indicate specific duties performed by the applicant and fails to describe whether information regarding dates of employment was taken from official company records. Therefore, this letter can only be afforded minimal weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- A Los Angeles County Department of Health medical card issued on April 12, 1988 showing the applicant's name. Though this card shows the applicant's name, it was issued very shortly before the end of the requisite period. As such, it does not establish that the applicant maintained continuous residence in the United States for the duration of the requisite period.

It is noted that the applicant also submitted California Identification cards issued on dates after May 4, 1988. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Truth is to be determined not by the quantity of evidence alone, but by its quality. The regulations specifically state that the evidence will be judged by its probative value and credibility. 8 C.F.R. § 245a.2(d)(6) (1988). Therefore, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E- M--, supra.*

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--, supra.*

Here, though the majority of the documentation provided by the applicant is consistent and plausible, the affidavits are insufficiently detailed to establish, by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the

requisite period. Further, that the applicant has not provided consistent testimony regarding his 1987 and 1989 absences from the United States casts doubt on whether he fully and completely represented his absences from the United States both during and subsequent to the requisite period.

In denying the application the director noted the above, and the fact that the applicant failed to provide the director with proof that the affiants from whom he submitted affidavits were in the United Stated prior to 1982, specifically noting that this was missing from affiant [redacted]. It is noted here that the record does contain Forms 1040 from [redacted]. However, additional evidence showing that he was present in the United States was not found in the record.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--, supra.*

However, as was previously noted, the affidavits were found insufficiently detailed to meet the applicant's burden of proof of establishing, by a preponderance of the evidence, that he maintained continuous residence in the United States for the duration of the requisite period. Further, though not noted by the director, information regarding the number of absences and reasons for the applicant's absences from the United States both during and after the requisite period was not consistent. This is significant as the reason listed for his departure from the United States during the requisite period is listed as visiting a sick relative where other documents indicate that he departed because his mother died at that time.

On appeal the applicant attempts to explain these contradictions. He submits a brief stating that he believes the director did not give due weight to his affidavits. He asserts that he has resided continuously in the United States for the duration of the requisite period. He goes on to say that he has a very close relationship with [redacted] and feels his affidavit was detailed in nature and should carry more weight than was given to it by the director. However, it is noted here that the applicant has continued to fail to provide proof that [redacted] was physically present in the United States during the requisite period.

In summary, the applicant has not provided evidence of residence in the United States relating to the 1981-88 period that is sufficiently detailed to meet his burden of proving, by a preponderance of the evidence, that he did so. 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). Further, evidence regarding the dates and details of his absences during and after the requisite period was not consistent. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States with his appeal.

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 regarding his absences 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 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.

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