

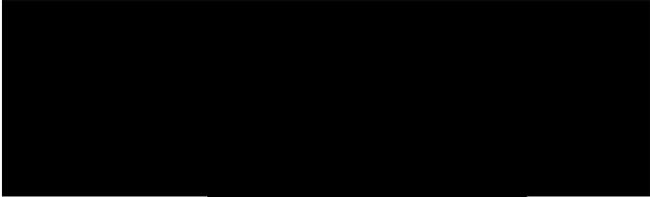
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-06-089-15422

Office: LOS ANGELES

Date: **AUG 15 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, and 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. Specifically, the director noted that the applicant did not meet his burden of establishing that he entered the United States before January 1, 1982. The director further noted that the applicant submitted four (4) receipts that she determined had been altered, undermining the credibility of the evidence submitted with his Form I-687 application. 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 submits a declaration and his attorney submits a brief. In both the declaration and the brief, the applicant asserts that the previously submitted five (5) affidavits establish that the applicant maintained continuous residence in the United States during the requisite period. The applicant further states that he had difficulty communicating with the officer during his interview. He also attempts to account for the contradictions in his previously furnished evidence, specifically noting the documents that the CIS officer asserted had been altered.

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).

An applicants who is eligible for adjustment to temporary resident status must establish that he or she entered the United States prior to January 1, 1982, and thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing his or her application. 8 C.F.R. § 245a.2(b)(1).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that

due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

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 alien 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. Here, the applicant indicated that he attempted to file on September 3, 1987 and therefore this is the date through which the applicant bears the burden of establishing that he maintained continuous residence.

An alien 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. 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 December 28, 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 as follows:

Wilmington, California from November 1981 to 1982; Wilmington, California from 1982 to 1984; in Wilmington, California from 1984 to 1988. He continued to show his addresses in Wilmington and Los Angeles California through the date he submitted his Form I-687. At part #32 of his Form I-687, the applicant showed two absences. The first absence listed occurred during the month of June in 1983. The applicant indicated that the purpose of this absence was his marriage. The second and final absence listed by the applicant occurred from July to August of 1987. The applicant indicated that the purpose of this trip was a family emergency. At part #33, he showed his first employment in the United States to be for in Wilmington, California from February 1982 to January 1989. The applicant also continued to show his employment through the date he submitted his Form I-687. It is noted that the applicant asserted in a declaration submitted with this Form I-687 that when he entered the United States in 1981 he did so as a 16 year old unaccompanied minor. Therefore, he found it difficult to obtain employment. He maintains that he worked recycling cans and cardboard boxes from the time he entered until he obtained part time work with

The applicant also submitted a declaration with his Form I-687. This declaration provides a detailed account of the applicant's entry into the United States as a sixteen (16) year old boy on November 10, 1981. He also details where and when he lived in apartments in Wilmington, California and provides an account of a fire that occurred in an apartment in which he was living. He states the fire occurred in either June or July of 1988. The applicant claims that all receipts and other documents he had been collecting were destroyed in this fire. The applicant provides details regarding his attempt to file for legalization on September 3, 1987 during the original filing deadline. He also provides details of his absence from the United States that occurred from July 27, 1987 to August 10, 1987 when he went to see his mother in Mexico, who was ill at the time. Though the applicant noted on his I-687 that he left the United States in 1983 to get married in Mexico, he does not mention that absence in his declaration.

Though the applicant's Form I-687 indicates two absences from the United States during the requisite period and though his declaration only details one absence during this period, at his interview with a CIS officer on May 5, 2006, the applicant stated that he had three absences from the United States. The officer's notes taken during the interview indicate that the applicant stated his first absence from the United States began on an unspecified day in June of 1983, and lasted until June 30, 1983. The purpose of this absence was the applicant's marriage in Mexico. The applicant indicated that he left the United States a second time on August 1, 1985, returning on August 30, 1985 after visiting family in Mexico. The third absence the applicant described to the CIS officer occurred from July 27, 1987 to August 10, 1987 when the applicant indicated he went to visit family in Mexico.

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 through the requisite period, in addition to his Form I-687, his testimony and his declaration, the applicant provided documentation in the form of five (5) affidavits, , one (1) employment verification letter, one (1) letter to the Los Angeles Fire Department, a copy of one (1) response from the Los Angeles Fire Department, two (2) original receipts, three (3) copies of receipts, and photocopies of money order receipts. It is noted that the applicant also submitted documentation to establish that he had remained in the United States after the requisite period.

Details of documents submitted in support of his application that are relevant to the requisite period as noted above are as follows:

- An affidavit from [REDACTED] stating that the affiant was present in the United States since 1981, noting both the affiant's and the applicant's addresses and stating that he met the applicant in either November or December of 1981. This affidavit notes that though the affiant does not know exactly when the applicant entered the United States, he was personally aware that the applicant lived at [REDACTED] in Wilmington, California in November or December of 1981. The affiant states that he lived with the applicant at [REDACTED] from late 1982 until 1984 and then they both moved to [REDACTED] in Wilmington California from 1984, remaining there until October of 1988. The affiant states that most of the applicant's belongings were burned in a fire when the applicant lived on [REDACTED]. Though not required to do so, the affiant has submitted a photocopy of his driver's license as proof of his identity.
- An affidavit from [REDACTED] stating that she has personal knowledge that the applicant was present in the United States since November of 1981, as he lived in her apartment complex. She states that the applicant lived in the apartment next door to her when she lived at [REDACTED] Wilmington, California. The affiant goes on to say that she is aware that the applicant lived "mostly in Wilmington, California" between 1982 and 1988. However, the affiant states that she left Wilmington, California in 1983. Though not required to do so, the affiant has submitted a photocopy of her California Identification Card, issued by the department of Motor Vehicles, a bank receipt for a "[REDACTED] residing at [REDACTED] in Wilmington, California on August 4, 1980, an electric bill issued to [REDACTED] residing in Log Beach, California dated December 13, 1983, a letter stating that the city of Long Beach, California supplied [REDACTED] with utility services at [REDACTED] in Long Beach, California from February 1, 1982 to April 23, 1984. Also submitted are rent receipts for [REDACTED] from various apartments from May and July of 1984, April and August of 1985 and October of 1987.

- It is noted that the letter from the City of Long Beach stating that the affiant received utility services from them starting in February of 1982 appears to conflict with her statement that she did not leave Wilmington, California until 1983.
- An affidavit from [REDACTED] stating that the affiant lived at [REDACTED] in Wilmington, California from 1980 to 1983 and establishing that she lived continuously in the United States throughout the requisite period. She states that she lived in the same building as the applicant in 1982 and then again from 1987 to 1988 when both she and the affiant both lived in the apartment complex at [REDACTED]. The affiant states she does not know when she met the applicant in 1982 but knows that it was in the beginning of that year. The affiant states that she knows that the applicant resided continuously in Wilmington, California between 1982 and 1988. However, she cannot verify how long he lived in the [REDACTED] building. She states that she became personally aware that the applicant was living at the [REDACTED] building when she moved there in 1987. Though not required to do so, the affiant has submitted a photocopy of her driver's license.
- An affidavit from [REDACTED] stating that he met the applicant in 1982 when he lived at [REDACTED] in Wilmington, California. The affiant states that he had personal knowledge that the applicant lived at that same address in an adjacent apartment. The affiant states he does not know when the applicant entered the United States but he became aware of him living in the apartment next door in the "very beginning of 1982." The affiant also states that he was personally aware that that applicant also lived in the building next door to [REDACTED] "around 1983." The affiant then says he had personal knowledge of the applicant living in Wilmington, California again in June of 1984 because the affiant moved to [REDACTED], where the applicant was living at the time. The affiant states that the applicant lived in [REDACTED] and that the affiant lived in Apartment #22 and then moved to [REDACTED] at that time. The affiant states that a fire occurred in the applicant's apartment in 1987 or 1988 and reiterates that he has personal knowledge that the applicant lived and worked at [REDACTED] between 1984 and 1988.
- An affidavit from [REDACTED] stating that though she does not have personal knowledge of when the applicant first entered the United States, she first met the applicant during "the first few days of" January 1982 when he walked past the apartment complex where she lived with her husband. The affiant provides details of how she came to meet the applicant. The affiant provides that the applicant began to work doing maintenance work for her at [REDACTED] apartment building in Wilmington, California in February of 1982. The affiant states that she and her husband managed this apartment complex. The affiant was aware that the applicant lived on [REDACTED] in Wilmington because she dropped him off at his apartment at times after he finished working. The affiant states that the applicant continued to work for her from 1982 until 1988. The affiant then goes on to say that the applicant moved into the apartment building on N. [REDACTED] in 1984, where he remained until the end of 1988 or the beginning of 1989.
- A copy of a letter written by Solomon [sic] Perez and dated April 2, 2005 asking the Los Angeles Fire Department to look into whether they have records documenting a fire in apartment [REDACTED] of [REDACTED] in Wilmington, California from sometime between June and August of 1988.

- A copy of a response from the Los Angeles Fire Department stating that they conducted a comprehensive search of their records and were unable to locate any information regarding the applicant's request.
- An employment verification letter from [REDACTED] sworn and notarized on August 10, 1992. This letter indicates that [REDACTED] was employed by [REDACTED] from February 1982 until 1989 doing maintenance work for her in an apartment complex located at [REDACTED] in Wilmington, California.
- An illegible copy of a purchaser's copy of two money orders with the date "1984" written at the top of the page. Because it is unclear who sent or received the money orders they do not establish that the applicant maintained continuous residence in the United States during the requisite period and are therefore not relevant.
- A guest check [REDACTED] written in black ink. As there is a business card stapled to the same page as the receipt for [REDACTED] in Wilmington, California, it is assumed that this indicates that the receipt is from that restaurant. Though the menu items on the guest check are written in black, a date is written in blue ink at the bottom of the page indicating the check was issued on 2/3/1986. The color of the ink that the date is written in is not consistent with the color of the ink used in the check. Thus, the document appears to have been altered.
- Receipt # [REDACTED] from European Jewelers written in black ink. The date of the receipt is 4/1/85. However, it is noted that the eight (8) on the date is written in blue ink rather than black and appears to be covering a nine (9) that is faintly visible below. Thus, the document appears to have been altered.
- A photocopy of a receipt for car repairs from an unidentified vendor. This receipt is dated June 2, 1983 and has the name [REDACTED] written on the receipt. Because the vendor is not identified this receipt is not amendable to verification. Further, as there is not address indicated on the receipt, it is unclear that this receipt was for goods or services obtained in the United States. Therefore it does not establish that the applicant maintained continuous residence in the United States.
- A photocopy of receipt [REDACTED] from [REDACTED] in Compton California. This receipt does not indicate who paid for services. The receipt is dated 5-12-1982. It is noted that this is a black and white photocopy of a receipt and therefore, all writing on the receipt is in black. However, there is visible white-out over the space where the eight (8) in 1982, is currently located. The ink that the eight (8) is written in is dark blue rather than black. Thus, the document appears to have been altered.
- A money order claim receipt # [REDACTED] for \$250.00 dated March 9, 1987 and another [REDACTED] for \$50.00 dated September 14, 1987. Both receipts indicate they were produced in Los Angeles, California. These receipts do not indicate who sent or who received the money orders. Because it is unclear who sent or received the money orders they do not establish that the applicant is associated with them and therefore they do not establish that he maintained continuous residence in the United States during the requisite period.

As was previously noted, the applicant also submitted documents including rent receipts, tax returns, W-2 forms, identification cards, pay stubs, and other receipts for the years 1988 to 2005. However, the issue in this proceeding is the applicant's residence in the United States during the requisite period. As he

states that he attempted to originally file his Form I-687 on September 3, 1987 that indicates that the requisite period for this applicant is January 1, 1982 until September 3, 1987. Because these additional documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since November 1981 and that, as he was a minor when he entered and therefore had difficulty obtaining work, that he found a part time job in the United States in February of 1982 and maintained that job throughout the requisite period. The applicant has also submitted affidavits from five (5) individuals, most of whom have provided identification documents and detailed accounts of where they were living, how they came to know the applicant, where both they and the applicant were living in the United States at various points in time during the requisite period and describing how they came to have personal knowledge of the applicant's residence at those point in time. Many of the submitted affidavits contain contact information for the affiants. When considered as a whole, these affidavits contain testimony that establishes that the affiants have sworn that the applicant was continuously present during the requisite period. The affidavits from [REDACTED] and [REDACTED] both state that the affiants have personal knowledge that the applicant was present in the United States since before January 1, 1982.

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, the applicant was not consistent regarding his absences from the United States, noting only one absence in his declaration, claiming that he was absent both in 1983 and 1987 in his Form I-687, and then indicating that he was absent from the United States on three occasions in his oral testimony to the CIS officer, in 1983 for thirty (30) or fewer days, in 1985 for thirty (30) days and then in 1987 for fourteen (14) days. This indicates that no single absence during the requisite period was for more than 45 days and the aggregate number of days is less than 180 days. That the applicant was not consistent regarding his absences from the United States casts doubt on whether the applicant did, in fact, maintain continuous residence in the United States.

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).

Further, casting doubt on the credibility of documents submitted by the applicant is the fact that receipts submitted by the applicant with his Form I-687 appear to have been altered to reflect dates other than those originally represented on the documents. This is material because the dates shown on these receipts correspond with the requisite period. The presence of these apparently altered documents submitted by the applicant calls into question the credibility of the other documents submitted with his Form I-687.

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).

In denying the application the director noted the above, and the fact that the applicant's testimony during his interview regarding when he met those who had submitted affidavits in support of this claim to have maintained continuous residence contradicted what the applicant himself had put forth on his declaration and what those affiants had submitted in their affidavits. The director emphasized that she found four receipts submitted by the applicant to have been altered.

On appeal the applicant attempts to explain these contradictions. He furnishes a brief and a declaration, both of which note communication problems with the officer during his interview which lead to misunderstandings regarding the applicant's date of entry and when he became acquainted with the affiants who submitted affidavits in support of the applicant's claim of having maintained continuous residence in the United States. The brief and the declaration also note that the applicant vehemently denies knowingly or willingly altering documents submitted with his application and states that he "can only assume that if such alteration took place there [sic] were done by the notary public he trusted to initially prepare his documentation." The brief indicates that the name of this notary is [REDACTED]. It is noted that in section 44 of the applicant's Form I-687 where it is indicated that the individual who prepared an applicant's Form I-687 should sign the form, [REDACTED] signature appears. [REDACTED] indicates his address is [REDACTED] Los Angeles, California 90015. It is further noted that [REDACTED] submitted and signed a cover letter that accompanied the applicant's Form I-687 that is dated December 20, 2005 indicated that he is represented [REDACTED] and [REDACTED] LLP. Without further evidence to the contrary, this appears to indicate that it was the law firm of the applicant's current attorney that submitted the applicant's Form I-687 and supporting documentation. Therefore, it is reasonable to assume that the applicant's attorney either was or should have been aware of the contents of that submission.

In summary, the applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States relating to the 1981-88 period that establishes that he maintained continuous residence in the United States.

The absence of sufficiently detailed, credible 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 regarding his absences and his submission of documents that either

appear to have been altered or possess 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.