



U.S. Citizenship  
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FILE:

MSC 05 193 10078

Office: NEW YORK

Date: AUG 28 2007

IN RE:

Applicant:



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

The district 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. 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, counsel attaches copies of documents previously submitted in support of the applicant's claim of continuous residence in the United States during the requisite period. Counsel also submits a statement from the applicant states that he has submitted true statements from individuals who knew him during the requisite period along with photo identity documents from those individuals. He explains that he is unable to provide another document to corroborate his claim of employment for Forman Box Company during the requisite period because the owner of the company has since passed away and the company is no longer in business.

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).

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, 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 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. See 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.

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 11, 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 indicated that he resided at [REDACTED] Jackson Heights, New York" from April 1981 to April 1983 and at [REDACTED] Jackson Heights, New York" from April 1983 to April 1989. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked as a driver for Louis Limousine Service, located at [REDACTED] Elmhurst, New York" from April 1981 to April 1987 and for Forman Box and Display Company, located at [REDACTED] from April 1987 to April 1992.

The applicant also indicated that he worked for India House Restaurant, located at One Hanover Street, New York, New York” from April 1988 to April 1990.

At his interview with a CIS officer on December 12, 2005, the applicant stated under oath that he first entered the United States without inspection from Mexico in October 1981. He further stated that he first went to Saint Leo Church in New York, New York, in April 1988. The applicant signed his sworn statement attesting under penalty of perjury that his testimony under oath was true and correct.

The applicant has submitted ample evidence establishing his residence in the United States since 1989. In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an original money transfer receipt from [REDACTED] Inc., located at [REDACTED] New York” indicating that [REDACTED] transferred money to [REDACTED] on October 26, 1984.

The applicant submitted another original money transfer receipt from South American Express indicting that [REDACTED] transferred money to [REDACTED] in Bogota, Colombia, on April 15, 1987. The year in this date appears to have been altered. It appears that the year of money transfer was originally 1997, but the “9” in 97 appears to have been altered to read 1987.

The applicant also submitted an affidavit dated August 21, 1992, from [REDACTED], a resident of Brooklyn, New York. [REDACTED] stated that he met the applicant in 1981 in a meeting. Mr. [REDACTED] did not provide any details as to what type of meeting he was attending when he met the applicant, the nature of his relationship with the applicant, or the frequency of his contact with the applicant during the requisite period. [REDACTED] stated that he had personal knowledge that the applicant lived in Jackson Heights, New York from November 1981 to February 1989, but he did not provide the applicant’s street addresses in Jackson Heights during that period. It is noted that the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989, not February 1989 as stated by [REDACTED]

The applicant included an affidavit dated March 6, 1992, from [REDACTED] stated that she met the applicant at church in June 1983. [REDACTED] did not provide information as to the frequency of her contact with the applicant. She indicated that she had personal knowledge that the applicant resided in Jackson Heights, New York from June 1983 to February 1989. However, the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York until April 1989.

The applicant also included an affidavit dated September 1, 1992 from [REDACTED] stated that he first met the applicant at a football game in Flushing, New York, in October 1981. However, [REDACTED] provided no information as to the frequency of his contact with the applicant. [REDACTED] stated that the applicant resided in Jackson Heights, New York, until February 1989. However, the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989.

The applicant provided an affidavit dated September 16, 1992, from [REDACTED] Ms. [REDACTED] stated that she met the applicant in December 1981 when he started to work for her company. She indicated that the applicant resided in Jackson Heights, New York until February 1989. However, the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989.

The applicant also provided an affidavit from [REDACTED] stated that he met the applicant at a party in 1981. However, he failed to provide any information as to the frequency of his contact with the applicant during the requisite period. [REDACTED] stated that the applicant resided in Jackson Heights, New York until February 1989. However, the applicant stated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989.

The applicant submitted an affidavit from [REDACTED] stated that he met the applicant at a New Year's party in 1981. However, [REDACTED] provided no information as to the frequency of his contact with the applicant during the requisite period. [REDACTED] indicated that the applicant resided in Jackson Heights, New York, until February 1989. However, the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989.

The applicant also submitted an affidavit August 22, 1992, from [REDACTED] stated that he met the applicant when he was investigating the Mormon Church in December 1981. However, [REDACTED] failed to provide any information as to the frequency of his contact with the applicant during the requisite period.

The applicant included a letter dated September 15, 1992, from [REDACTED] Service, located at "[REDACTED] New York." [REDACTED] stated that the applicant worked for her company as a messenger from December 1981 until May 1987. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The letter from [REDACTED] does not meet this standard. [REDACTED] does not provide the applicant's addresses at the time of his employment for her company.

The applicant also included a letter dated June 15, 1992, from [REDACTED] of Forman Box and Display Company, Inc., located at [REDACTED] New York." [REDACTED] stated that the applicant had been working for his company since 1987. The letter from [REDACTED] does not meet the standard for employer attestations set forth at 8 C.F.R. § 245a.2(d)(3)(i). Mr. [REDACTED] did not provide any information as to the applicant's duties for his company or the applicant's addresses during his period of employment for Forman Box and Display.

The applicant provided a letter dated July 12, 1990, from [REDACTED], Office Manager of India House, One Hanover Square, New York, New York. [REDACTED] stated that the applicant had worked for India House on a stand-by basis "for over a year and a half." The letter from [REDACTED] does not

meet the standard for attestations from employers set forth at 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] failed to provide the applicant's exact period of employment, his duties with the company, or his addresses during the period of employment.

The applicant also provided a letter dated September 10, 1992, from [REDACTED] stated that the applicant lived in her apartment from October 1981 until March 1989 at the following addresses: [REDACTED] in Heights, New York and [REDACTED] 4F, Jackson Heights, New York. [REDACTED] did not specify the inclusive dates the applicant lived with her at the above addresses, nor did she provide any information as to how she met the applicant. It is noted that the applicant indicated on the Form I-687 that he resided in Jackson Heights, New York, until April 1989, not until March 1989 as stated [REDACTED]

The applicant submitted a letter dated October 3, 1992, from [REDACTED] of Church of Saint Leo, located at [REDACTED] stated that the applicant had been an active member of his parish community since 1981. Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establishes how the author knows the applicant; and, (G) establishes the origin of the information being attested to. The letter from [REDACTED] does not conform to this standard. [REDACTED] did not specify the applicant's inclusive dates of membership, nor did he provide the addresses where the applicant resided during the membership period. It is noted that the applicant stated under oath during his legalization interview that he first attended St. Leo Church in April 1988. This statement contradicts [REDACTED] statement that the applicant had been a member of his parish community since 1981. The applicant has not provided any explanation for this discrepancy.

The record contains a previous Form I-687 signed by the applicant on September 28, 1993. The applicant indicated at part #33 of this application that he resided at [REDACTED] Jackson Heights, New York" from October 1981 to June 1983. This statement contradicts his statement on the current Form I-687 that he resided at that address from April 1981 to April 1983. It also contradicts his statement under oath during his legalization interview and on the 1993 Form I-687 that he first entered the United States in October 1981. If he first entered the United States in October 1981 as he has stated under oath, he could not have resided at [REDACTED] [REDACTED], Jackson Heights, New York" from April 1981 to June 1983. The applicant indicated on the 1993 Form I-687 that he resided at [REDACTED] F, Jackson Heights, New York" from June 1989 to February 1989. This statement contradicts his statement on the current Form I-687 that he resided at that address from April 1983 to April 1989.

The applicant indicated on the 1993 Form I-687 that he worked for Louis Limousine Service as a messenger from December 1981 to June 1987. This statement contradicts his statement on the current Form I-687 that he worked for Louis Limousine Service as a driver from April 1981 to

April 1987. Since the applicant has stated under oath that he didn't enter the United States until October 1981, he could not have worked for Louis Limousine Service since April 1981. The applicant indicated on the 1993 Form I-687 that he began working for Forman Box and Display Company in June 1987. That statement contradicts his statement on the current Form I-687 that he began working for Forman Box and Display in April 1987. The applicant indicated on the current Form I-687 that he began working for India House in April 1988. This statement contradicts his statement on his 1993 Form I-687 that he didn't begin working for India House until December 1988.

The applicant submitted with the 1993 Form I-687 a completed class membership questionnaire he signed on September 19, 1992. In response to question No. 8 on the questionnaire, where applicants are asked when they last departed the United States after May 1, 1987, the applicant stated that he was in Colombia due to a family emergency from March 12, 1988 to December 18, 1988. This statement contradicts his statement on both the 1993 Form I-687 and the current Form I-687 that he was in Colombia from March 1988 to April 1988.

The applicant submitted a photocopy of a mailing envelope postmarked on February 25, 1982, in Colombia. The envelope is addressed to the applicant at [REDACTED]. The applicant indicated on the Form I-687 that he lived at this address from April 1983 to April 1989. He was residing at [REDACTED], New York" as of February 25, 1982, the date of this postmark. The applicant has not provided any explanation for this discrepancy.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts 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. (Comm. 1988).

On February 6, 2006, the district director issued a notice informing the applicant of her intent to deny his application because he failed to submit sufficient evidence to corroborate his claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States from that date to the date the applicant attempted to file his Form I-687 with the Service during the application period ending on May 4, 1988. The district director particularly noted that the affidavits from [REDACTED]

[REDACTED] were not accompanied by a photo identity document or proof that the affiants were actually in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim. The applicant, in response, submitted letters stating and photocopied identity documents from [REDACTED]

[REDACTED] Each of the above individuals stated in his or her letter that he or she had previously provided an affidavit attesting to the applicant's continuous residence in the United States during the requisite period and all of the information contained in the affidavit was true. However, none of these

individuals provided any additional relevant and detailed verifiable information relating to the applicant's residence in the United States during the requisite period.

The district director denied the application on May 21, 2006, because the applicant failed to submit sufficient evidence to establish continuous residence in the United States during the requisite period. It is noted that the district director made reference in the denial decision to the applicant's absences outside the United States from September 1, 1988 to January 19, 1989. This absence occurred after the requisite period to establish continuous residence in the United States. Even if the applicant was outside the United States for more than 45 days during that period, it is not a bar to his eligibility for temporary resident status. Therefore, this statement is hereby withdrawn.

The district director also noted that the applicant indicated in his 1992 class membership questionnaire that he was in Colombia due to a family emergency from March 12, 1988 through December 18, 1988, a period of nine months, six days. This period of time exceeds the 45 days allowed for a single absence and the 180 days allotted for all absences in the aggregate.

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).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

As previously stated, there is a contradiction in the applicant's statements regarding this absence. He stated on the 1993 Form I-687, the current Form I-687, and under oath during his 2005 legalization interview that he was outside the United States from March 1988 to April 1988, not from March 1988 to December 1988 as he stated in the 1993 class membership questionnaire. If the applicant was in Colombia from March 1988 to December 1988 as he stated on the 1993 class membership questionnaire, his absence exceeded the allotted 45-day period for a single absence during the requisite period. It is noted that the requisite period to establish continuous residence in the United States ended on May 4, 1988. The exact period of absence to be considered in this case is not from March 1988 to December 1988, but rather from March 12, 1988 to May 4, 1988, a period of 53 days. This 53-day absence exceeds the allotted 45 days for a single absence during the requisite period.

The applicant has submitted a letter dated August 9, 1993, from [REDACTED] informing him that the airline does not have passenger records dating back to March 12, 1988. Counsel stated

in his response to the notice of intent to deny:

Further, [REDACTED] was not out of the USA from March 12, 1988 to December 18, 1988, but from March 1988 to April 1988. We don't know why you have that impression since our client's I-687 states clearly his absences from the USA. Therefore he didn't break his continuous physical presence in the USA.

Counsel's statement is incorrect. The applicant listed an absence from March 12, 1988 to December 18, 1988, in his own handwriting on the 1992 class membership questionnaire. The applicant has not provided any explanation for this discrepancy in his claimed dates of absence. The applicant has not provided any information regarding the nature of his family emergency, nor has he provided any evidence to establish that an emergent reason that came suddenly into being delayed his return to the United States beyond 45 days.

In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States throughout the requisite period.

On appeal the applicant explains in a personal statement that he made a mistake when he indicated an absence from March to December 1988 on the 1992 class membership questionnaire. He affirms that his true and correct dates of absence outside the United States were from March 12, 1988 to April 15, 1988. The applicant also explains that he is unable to provide an additional employment verification document from [REDACTED] the owner of [REDACTED] company, because [REDACTED] is deceased and the company is no longer in business. The applicant submits copies of documents previously submitted in response to the notice of intent to deny his application.

The applicant's explanation for the discrepancy in his claimed dates of absence in 1988 is unacceptable. The applicant signed the 1992 class membership questionnaire on September 29, 1992, certifying under penalty of perjury that the information provided on the form was true and correct.

In summary, the applicant has provided one money transfer receipt with an apparently altered date, one money transfer receipt dated in 1984, and one mailing envelope addressed to the applicant at an address he did not reside at until over a year after the postmark date. The affidavits provided by the applicant lack sufficient relevant and detailed information to corroborate the applicant's claim of continuous residence in the United States relating to the 1981-88 period.

The absence of sufficiently detailed supporting 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 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.