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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 06 054 11184

Office: LOS ANGELES

Date: DEC 05 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: 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. Wieman, 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 that the inconsistencies between the applicant's verbal and written testimony regarding his absences from the United States undermined the applicant's credibility and the validity of his overall claim. 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 provides an explanation in an attempt to reconcile an inconsistency discussed in the denial and resubmits copies of various documents that were previously submitted.

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.

In the present matter, the primary issue is the applicant's credibility. In order to fully explore this issue and determine whether the applicant has met his burden of proof, the applicant's supporting documents must be analyzed. The record shows that the applicant first submitted a Form I-687 on or about July 20, 1991. In support of that application and the claim 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, the applicant submitted the following documentation:

1. The applicant's warrant for arrest dated April 23, 1986.
2. Two receipts addressed to the applicant from the State of California Department of Motor Vehicles. One receipt is for an identification card and is dated January 24, 1986; the other receipt is for a driver's license application fee and is dated May 19, 1986. Both receipts show the applicant's address at that time to be [REDACTED] in Santa Ana, California.
3. The applicant's court document showing that he was convicted of one misdemeanor and two infractions in the State of California on July 1, 1986. The document shows that the applicant's citation was issued on March 20, 1986. Case No. [REDACTED]
4. The applicant's pay stubs for various time periods throughout 1986 and 1987. The employer issuing the pay stubs was Rickenbacker International Corporation.
5. Payment receipts from [REDACTED] showing that the applicant made payments towards his balance on January 20, 1986, July 15, 1986, and March 28, 1987.

6. A notice from the Internal Revenue Service (IRS) dated April 6, 1987 informing the applicant about a discrepancy regarding his social security number. The notice shows the applicant's residential address as [REDACTED]
7. Notice from the IRS dated May 11, 1987 informing the applicant of unpaid taxes for the 1986 tax year.
8. An incomplete photocopy of the first page of the applicant's joint state tax return, Form 540A for the 1987 tax year along with a photocopy of a Form W-2 wage and tax statement for 1987 issued by [REDACTED]. Both documents show the applicant's residential address as [REDACTED]
9. A sworn statement dated July 12, 1991 given by [REDACTED] attesting to the applicant's residence from 1981 to December 1985. The affiant provided his address at the time of the affidavit. However, it is unclear whether he was claiming that he and the applicant resided at that address ([REDACTED]) or whether this was the address where the affiant himself was residing at the time he made the sworn statement.
10. Affidavits from [REDACTED] both dated July 19, 1991. Both affiants claimed to be friends and neighbors of the applicant. Both affiants also stated that they have known the applicant since 1981. Neither provided a specific residential address for the applicant during their alleged acquaintance. They merely stated that the applicant has resided in Santa Ana, California since 1981.
11. An affidavit from [REDACTED] dated July 18, 1991 claiming that he has been friends with the applicant since they lived in Mexico. This affiant also failed to provide an exact residential address for the applicant, merely stating that the applicant resided in Santa Ana, California since 1981.
12. An affidavit from [REDACTED] dated July 12, 1991 claiming that he is the applicant's friend and has knowledge that from 1981 until December 1985 the applicant resided at [REDACTED]
13. An employment verification letter dated July 12, 1991 from [REDACTED] Produce. The employer stated that the applicant was employed by [REDACTED] from July 1981 to December 1985 and provided the applicant's "present" residential address, i.e., the applicant's address as of the date of the employment letter.
14. An employment letter dated May 24, 1990 from [REDACTED] stating that the applicant has been employed by this employer since January 8, 1986.

In analyzing the above documentation and verifying it with information provided by the applicant in the Form I-687 initially submitted, the AAO has determined that a number of discrepancies exist. Namely,

the contemporaneous documents discussed in Nos. 2, 6, and 8 all show the applicant's residential address in 1986 and 1987 to have been [REDACTED], according to the information provided in No. 33 of the Form I-687, the applicant claimed that he only resided at that address until November 1985. In fact, even the 1989 W-2 wage and tax statement issued by [REDACTED] still shows [REDACTED] as the applicant's residential address. While this document does not address the relevant statutory period in question, it is nevertheless relevant in establishing the discrepancy between the applicant's account of his U.S. residences and the residential addresses found in the contemporaneous documents submitted to support his claim. The AAO further notes that the affidavit discussed in No. 12 above is inconsistent both with the applicant's claim and with the contemporaneous documents submitted. Specifically, while the affiant claimed that the applicant resided at [REDACTED] from 1981 until December 1985, the applicant's account of his prior residences does not include the address provided by the affiant. Nor is the affiant's claim supported by any of the contemporaneous documents on record. While the AAO acknowledges the claims of the affiants in Nos. 9-11, none of the affiants provided information that can be verified either with the information in the Form I-687 or with the contemporaneous documents for the relevant time period.

Additionally, the AAO notes that No. 35 of the original Form I-687 specifically instructed the applicant to disclose all absences from the United States dating back to January 1, 1982 through the date the applicant attempted to file the application. In response, the applicant claimed only one absence from June 20, 1987 to July 15, 1987. No other absences were disclosed. The AAO further notes that No. 32 of the Form I-687 filed on November 23, 2005 also specifically asked that the applicant disclose all absences from the United States dating back to January 1, 1982. Again, the applicant claimed a single absence from June to July 1987. In support of the more recently filed Form I-687, the applicant resubmitted much of the documentation noted above with the following additions and/or changes:

1. The applicant's 1986 tax return in its entirety, showing the first and second pages. It is noted that the applicant neither signed nor dated the tax return. As such, it is unclear whether the document was actually filed, particularly in light of the IRS notices dated April 6 and May 11, 1987 notifying the applicant of unpaid taxes.
2. A 1986 W-2 wage and tax statement issued to the applicant by Lyons International Security, Inc. It is noted that the applicant did not list this employer on either of his Form I-687s.
3. The applicant's 1987 tax return in its entirety, showing the first and second pages. Again, the document is neither signed nor dated by the applicant or the applicant's spouse, despite the fact that the document suggests that taxes were filed jointly.
4. An additional 1987 W-2 wage and tax statement issued by [REDACTED]. The employer listed the applicant's address as [REDACTED]. It is noted that the two remaining employers who also issued 1987 W-2 statements to the applicant stated that the applicant's address at the time of such issue was [REDACTED].

5. An affidavit dated May 11, 2006 from [REDACTED] again stating that the applicant resided at [REDACTED] 1981 through December 1985. The affiant stated that the applicant subsequently moved to [REDACTED], where he continues to reside.

On November 6, 2006, the director issued a decision denying the application. The director specifically discussed the marriage certificate the applicant submitted, which indicates that the applicant got married in Mexico on October 16, 1985. The director determined that evidence of the marriage is inconsistent with the applicant's statement claiming that he met his wife in the United States in 1987.

On appeal, the applicant states that the director's interpretation of his statement was erroneous and explains that in 1987 he and his wife reunited in the United States. The applicant does not claim nor did not claim that he first met his wife in 1987. The AAO finds that the applicant's explanation is supported by the applicant's marriage certificate. However, in reviewing the record of proceeding, the AAO determined that further information was required with regard to the applicant's absence, which had not been previously disclosed. As such, a letter was issued on October 30, 2007, instructing the applicant to explain the circumstances and length of the undisclosed absence.<sup>1</sup>

In response, the applicant submitted a letter dated October 29, 2007 in which he claimed that he did not intend to provide misleading information. The applicant claimed that he was improperly advised and was only asked to provide information regarding his latest departure. However, the record clearly shows that both of the Form I-687s submitted by the applicant specifically provide instructions for each applicant to list all absences from the United States after January 1, 1982. The applicant disclosed only the 1987 absence and signed each application under the penalty of perjury. Any suggestion that the applicant was somehow misled into omitting relevant information is dubious at best, particularly in light of the numerous anomalies with regard to the applicant's claimed residential history.

While the AAO acknowledges the submission of various contemporaneous documents to account for significant periods of U.S. residence in 1986 and 1987, the AAO cannot overlook the fact that the applicant failed to provide Citizenship and Immigration Services (CIS) with an accurate history of his residential addresses given the contemporaneous documentation that was obviously in his possession. More specifically, the affidavits described in Nos. 10 and 11 above, all of which were attestations from the applicant's friends and neighbors, lack any verifiable information. To the contrary, while the affiants in Nos. 9 and 12 above both claimed that the applicant resided at [REDACTED], this information is inconsistent with the residential history provided by the applicant himself in the first Form I-687, which does not list [REDACTED] as one of the applicant's prior residences. Additionally, the applicant failed to provide any residential address for the year 1987 even though he provided contemporaneous evidence that suggests that he was apparently residing in the United States at that time. Thus, while the contemporaneous documentation submitted suggests that the applicant was residing in the United States in 1986 and 1987, the fact that he failed to provide an accurate account of his residential history renders questionable those portions of the applicant's alleged periods of U.S. residence that are unsupported by

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<sup>1</sup> The AAO originally issued the letter on October 11, 2007. However, the AAO subsequently obtained the applicant's updated address and, therefore, resent the prior notice.

contemporaneous evidence. That being said, the applicant's claim that he disclosed his 1985 absence during his legalization interview is not supported by corroborating evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, it is unclear why the applicant would disclose his 1985 departure to Mexico at a legalization interview, as he claims he had done, but failed to disclose this relevant information when specifically asked to do so in the Form I-687 instructions. In light of the applicant's overall questionable credibility, the AAO cannot assume the applicant's claims as fact when they are entirely unsupported by the evidence of record.

Lastly, while the AAO acknowledges the applicant's submission of an employment letter discussing the applicant's employment in the United States from 1981 through 1985, the letter fails to meet the regulatory requirements set out in 8 C.F.R. § 245a.2(d)(3)(i), which asks that the employer provide the alien's address at the time of the claimed employment. In the letter submitted, the alleged employer provided the applicant's address at the time the letter was written but failed to provide the applicant's address at the time of employment. Furthermore, in light of the employer's apparent lack of letterhead stationery, it is unclear why a contact phone number and address were not provided so that the employer could be reached for further information if necessary.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-1985 period. As discussed above, neither the employment letter nor the affidavits from the applicant's friends and neighbors are sufficient to establish the applicant's residence during the time period in question. 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 failure to disclose relevant information on his applications and his reliance upon documents with minimal probative value, it is concluded that the applicant 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.