

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE: [REDACTED]
MSC-05-249-16740

Office: SAN DIEGO, CA

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, San Diego, California, 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. In his Notice of Intent to Deny (NOID), the director stated that the applicant failed to provide sufficient evidence to establish that he was eligible to adjust status to that of a Temporary Resident. The director granted the applicant thirty (30) days within which to submit additional evidence in response to his NOID. As the applicant failed to submit additional evidence for consideration in response to the director's NOID, he did not overcome the reasons for denial contained in that NOID. 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 he denied the application.

On appeal, the applicant asserts that he did initially send evidence to the director in support of his application. However, it was returned to him as he had sent it to the wrong address. He submits this evidence with his appeal.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must be 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite 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 June 6, 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 address in the United States during the requisite period to have been at 250 Imperial Avenue in Calexico, California. He indicates that his father also lived there. He then shows that he lived in Mexico from September of 1987 to 2005. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant showed that his father worked for [REDACTED] FLC as a laborer from July of 1981 until June of 1987. Notes on this application that appear to have been taken by a Citizenship and Immigration Services (CIS) officer at the time of the applicant's interview with a CIS officer indicate that the applicant testified that he, and not his father, worked for this company at that time. It is noted that the applicant was born in May of 1964. Therefore, he would have been seventeen (17) years old in 1981.

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 the following:

- An affidavit from [REDACTED] that was notarized on March 15, 2006. This affiant states that she is the applicant's sister and that she knows that he resided at 250 Imperial Avenue in Calexico, California from 1981 until 1987. The affiant does not indicate which month in 1987 the applicant stopped residing at this address. Therefore, it is not clear whether she is asserting that the applicant resided there for the duration of the requisite period. Though not required to do so, the affiant has provided a photocopy of her driver's license as proof of her identity. Here, the affiant does not establish that she herself resided in the United States during the requisite period. She does not provide details regarding any periods of time during which the applicant was absent from the United States. Because of its significant lack of detail and because it does not indicate when in 1987 the applicant stopped residing in the United States, this affidavit can be afforded little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] who states that the applicant lived at 250 Imperial Avenue in Calexico, California from 1981 to 1987. Though not required to do so, the affiant has provided proof of her identity by submitting a photocopy of her driver's license. Here, the affiant fails to indicate how she met the applicant. This is significant, as she lives in Petaluma rather than in Calexico. It is noted here that Petaluma, a city just north of San Francisco, California, is approximately six hundred thirty (630) miles from Calexico, a town that borders Mexico. The affiant failed to indicate which month the applicant's residence in Calexico ended or whether there were periods of time during which she did not see the applicant. Because of its significant lack of detail, this affidavit can be afforded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] who states that the applicant lived at 250 Imperial Avenue in Calexico, California from 1981 to 1987. The affiant does not indicate which month in 1987 the applicant stopped residing at this address. Therefore, it is not clear whether she is asserting that the applicant resided there for the duration of the requisite period. Though not required to do so, the affiant has provided a photocopy of her driver's license as proof of her identity. Here, the affiant does not establish that she

herself resided in the United States during the requisite period. She does not provide details regarding any periods of time during which the applicant was absent from the United States. Because of its significant lack of detail and because it does not indicate which month in 1987 the applicant stopped residing in the United States, this affidavit can be afforded little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A notarized statement from [REDACTED] who states that she has known the applicant since 1986. She goes on to say that she is his friend. Here, [REDACTED] does not indicate where she met the applicant or to state whether they met in the United States. She does not indicate the frequency with which she saw the applicant. [REDACTED] does not establish that she herself was residing in the United States during the requisite period or to show an address at which she personally knows the applicant resided during that time. As this letter is significantly lacking in detail and as it only pertains to part of the requisite period, very minimal weight can be accorded to this affidavit in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A letter from [REDACTED] who indicates he is the ex-general manager of [REDACTED] farm labor contractor. This letter is written on company letterhead and states that the applicant, [REDACTED] worked harvesting lettuce and broccoli from 1981 to 1987. He states that the applicant was paid in cash and that no proper employment records were kept for individuals who worked for this company. He states that this company closed operations in September 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, the letter provided by [REDACTED] does not provide the applicant's address at the time of employment. It fails to state the exact period of employment, periods of layoff. This employer has not provided an affidavit noting why the applicant's employment records are unavailable. [REDACTED] further fails to explain how he can verify that the applicant began working for him in 1981, as he has stated that he had no records available to him at the time he wrote this letter. Further, the applicant indicated on his Form I-687 that his father, rather than the applicant himself worked for this company. Therefore, this letter conflicts with what the applicant showed on his Form I-687. Because

this letter is found to be lacking in detail, this letter can be afforded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

Though it is noted that the applicant has submitted tax documents, these documents are from years subsequent to the requisite period. 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.

Thus, on his application, which the applicant signed under penalty of perjury, the applicant showed that he resided in the United States and that he lived with his father who worked for [REDACTED]. It is noted that at the time of his interview, the applicant stated that he, and not his father, worked for [REDACTED]. Evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant, and not his father worked for this company.

In denying the application the director noted the above, and the fact that his office found evidence submitted by the applicant was not sufficient to establish that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant states that the director erred when he stated that he did not submit documents in response to his Notice of Intent to Deny (NOID). He asserts that he did submit additional evidence and resubmits these documents in support of his application.

These documents include:

- A letter from the applicant dated October 18, 2006 that states that when he lived in Calexico he shared a room with three (3) other men. He states that he lived at the "Hotel El Rey" at 250 Calle Imperial in Calexico. It is noted that the applicant indicated on his Form I-687 that his father lived at this address. He did not indicate on that form that this was a hotel. The applicant indicates that he is also enclosing rent receipts for the year 1988. It is noted here that the applicant indicated both on his Form I-687 and at the time of his interview with a CIS officer that he returned to Mexico in 1987 and remained there until 2005.
- Photocopies of rent receipts. These receipts are of varying sizes and those that show a name from which rent was received indicate that it was received from [REDACTED]. These receipts are from March of 1988, and December of 1989 as well as for another month that is not legible in the year 1989. The receipts indicate they are for the rent of a duplex at 2808 "Hypoint" Ave in Escondido, California. The applicant has not ever indicated that he resided at this address. He has not shown how these receipts are associated with his residency. Further, the applicant has consistently stated that he left the United States in 1987 and did not return until 2005. Therefore, very minimal weight can be afforded to these receipts as being associated with the applicant.

No weight can be given to them in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A Form G-325A, Biographic Information Form submitted by the applicant and signed on November 30, 2006. On this form the applicant indicates that he lived in Ensenada, Baja California in Mexico from June of 1987 until January of 2004. It is noted the applicant has submitted receipts for rent in California in 1988 and 1989 that he claims are associated with his addresses of residence during this time. The testimony in this form is not consistent with that evidence and casts doubt on whether the applicant has accurately represented the dates and addresses of residency in the United States during and subsequent to the requisite period.
- A new, amended version of the applicant's Form I-687 that was signed by the applicant on November 30, 2006. This form shows that the applicant, rather than his father, worked for [REDACTED] from July 1981 to June of 1987. This Form I-687 also shows that the applicant resided in Mexico from June 1987 to January of 2004. As was previously indicated, an applicant for adjustment of status to that of a Temporary Resident must establish that he has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must be 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). Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 filing period of May 5, 1987 until May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. Because the applicant has indicated on this Form I-687 that he resided in Mexico from June 1987 to January 2004, doubt is cast on whether the applicant maintained continuous physical presence during that period.

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). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with him. He has submitted attestations from individuals that lack detail and can be given very little weight. On appeal, he has submitted rent receipts that conflict with other documents he submitted on appeal regarding his residency in the years 1988 and 1989. This casts doubt on whether the applicant has accurately represented his addresses of residency in other documents in the record.

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. 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).

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 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.