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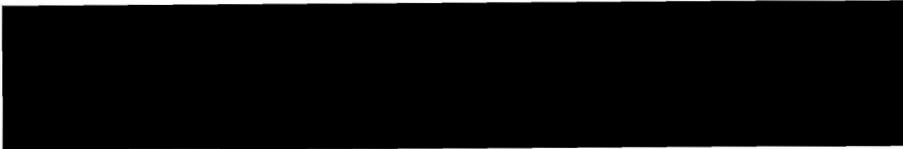
Date: MAR 21 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status under section 245A of the Act.

On appeal, counsel for the applicant asserts that the applicant provided sufficient documentation that establishes by a preponderance of the evidence his residence in the United States during the requisite period.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the 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 have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 period, 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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on March 15, 2005. The applicant signed his application under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that he resided in Whittier, California from December 1976 until January 1989. At part #32 of the application, the applicant indicated that he had one absence from the United States during the requisite period: July 1987 until August 1987. At part #33 of the application, the applicant showed that he was self-employed at “different locations” from December 1976 until June 1988. The applicant failed to provide any other specific information on his self-employment.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. This proceeding will only address those documents that relate to the applicant’s residence in the United States during the requisite period.

The applicant submitted identical “fill-in-the-blank” affidavits from [REDACTED] and [REDACTED]. The affidavits from [REDACTED]

_____ and _____ lack considerable detail because the affiants fail to provide detailed information on how they first met the applicant. The fill-in-the-blank affidavit requests the affiant to describe the beginning of his/her acquaintance with the applicant. The affidavits from _____ and _____ provide that the affiants are “very good friends” with the applicant without any other information on their first meeting or subsequent friendship. Similarly, the affidavit from _____ provides that he is “very good friends” with the applicant and has worked with him. Again, this statement is vague in that it fails to provide information on the affiant’s first meeting with the applicant and subsequent friendship. Although _____ states that he has worked with the applicant, he has failed to provide any details on this employment. Hence, these affidavits lack considerable detail and can only be afforded minimal weight as probative corroborating evidence.

The affidavit from _____ provides some additional detail on her first acquaintance with the applicant. This affidavit states, “I met _____ in 1980 because his wife used to work at the same place I worked, and that is how I met _____ and since then we have maintained a very close friendship that now [sic] we are godfathers [sic].” Although this affidavit provides some information on _____’s first meeting with the applicant, other aspects of the affidavit lack considerable detail. The fill-in-the-blank affidavit requests the affiant to provide her personal knowledge of the cit[ies], town[s] and state[s] the applicant has lived in during his residence in the United States. _____ responded to this section of the affidavit, “[i]n Los Angeles Area from 1980 to Present.” This lack of detailed information is inconsistent with _____’s claim that she has a “very close friendship” with the applicant. Therefore, this affidavit can also only be afforded minimal weight as probative corroborating evidence.

The applicant’s record contains an affidavit from _____ dated March 20, 1990. This affidavit was submitted as evidence for a determination of the applicant’s class membership in *Catholic Social Services v. Meese*. The affidavit from _____ provides that she has **personal** knowledge of the applicant’s residence in the United States for nine years. The affidavit further states that _____ has personal knowledge that the applicant was absent from the United States on a trip to Mexico from August 11, 1987 until September 9, 1987. _____ affidavit lacks any information on when she first met the applicant and the extent of their contact during the requisite period. Therefore, this affidavit can only be afforded minimal weight as probative corroborating evidence.

The applicant submitted a Form I-687, dated February 27, 1990, for a determination of his class membership in *Catholic Social Services v. Meese*. It should be noted that this application indicates that the applicant first entered the United States in January 1976, while the instant application shows that he first entered the United States almost one year later in December 1976. Based on the applicant’s date of birth, he would have been fifteen years old when he first entered the United States. The applicant shows on this application that he had one absence from the United States in July 1987 when he traveled to Mexico for one month. The applicant’s claim that he has continuously resided in the United States since he was fifteen years old is questionable since his application also shows that he is married with four children born in Mexico. Furthermore, the

applicant submitted with the instant application a Form G-325A, Biographic Information Sheet, where he has left blank any information on his wife or his date and place of marriage. These omissions and inconsistencies draw into question the credibility of the applicant's claim of continuous residence in the United States during the entire requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The applicant submitted numerous contemporaneous documents as independent and objective evidence of his residence in the United States during the requisite period. It should be noted that with the exception of the applicant's California Identification Card, these documents were issued under the applicant's claimed aliases,

_____ and _____. The documents are as follows:

- A copy of the applicant's California Identification Card, dated March 10, 1976;
- Shell credit card statement under the name _____ dated November 28, 1981. The applicant submitted two other Shell credit card statements, dated November 29, 1978 and July 30, 1979, however these statements do not list the card holder's name;
- General Telephone Company of California (GTE) billing statements under the name _____, dated March 10, 1980, April 10, 1980 and May 10, 1980. GTE billing statements under the name _____ dated September 28, 1982, November 13, 1984, October 13, 1985 and November 10, 1988;
- J.C. Penny Company, Inc. credit card statement under the name _____, dated August 19, 1981;
- Levitz Warehouse Showroom sales receipt under the names _____ and _____ dated April 15, 1982;
- Southern California Gas Company (Gas Company) billing statements under the name _____, dated November 12, 1982, December 14, 1982, November 10, 1983, December 11, 1984, and a statement issued on an unknown date for the billing period of September 9, 1985 until October 7, 1985. Gas Company billing statements under the name _____ dated November 10, 1986, December 12, 1986, October 11, 1988 and December 13, 1988; and
- Southern California Edison Company (SCE) electricity billing statements under the name _____ dated July 29, 1983, September 28, 1983, November 29, 1984, December 31, 1984, January 30, 1985, March 1, 1985, November 4, 1986, December 8, 1986, November 4, 1988 and December 7, 1988.

These documents, under the preponderance of the evidence standard, establish _____'s continuous residence in the United States during the requisite period. However, the applicant has failed to provide any information to establish that the name _____ is his alias. Notably, the affiants, _____ and _____ refer to the applicant by the name "_____" in their affidavits. Moreover, the majority of the addresses listed on _____'s documents are _____

inconsistent with the applicant's residential information as provided on his Form I-687 and Form G-325A. The applicant indicated on these forms that he resided at [REDACTED] Whittier, CA from December 1976 until January 1984 and [REDACTED] Whittier, CA from February 1984 until January 1989. These addresses are inconsistent with the following documents:

- GTE billing statements, dated March 10, 1980, April 10, 1980, May 10, 1980, have a mailing address of [REDACTED] Whittier, CA;
- Levitz Warehouse Showroom sales receipt, dated April 27, 1982, has a furniture delivery address of [REDACTED], Los Angeles, CA;
- Gas Company billing statements, dated November 12, 1982, December 14, 1982, November 10, 1983, have the mailing address of [REDACTED] Whittier, CA;
- GTE billing statement, dated September 28, 1982, has the mailing address of [REDACTED] Whittier, CA;
- Gas Company billing statements, dated November 10, 1986, December 12, 1986, October 11, 1988 and December 13, 1988 have the mailing address of [REDACTED] Moreno Valley, CA;
- SCE billing statements, dated November 4, 1986, December 8, 1986, November 4, 1988 and December 7, 1988 have the mailing address of [REDACTED] Sunnymead, CA; and
- GTE billing statement, dated November 10, 1988, has a mailing address of [REDACTED] Moreno Valley, CA.

The numerous inconsistencies between the applicant's documentation and his application raise serious doubts as to credibility of his application. Not only has the applicant failed to provide any evidence of his alias as [REDACTED], the documentation he submitted under this name is inconsistent with his application. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On October 24, 2005, an immigration officer issued a Form I-72 to the applicant requesting that the applicant provide a statement from the Social Security Administration listing the years he has worked, print-outs from the IRS (Internal Revenue Service) for the period of 1981 until 1988, and a Form I-864, Affidavit of Support with supporting documents. In denying the application, the director found that the applicant failed to submit the requested documents for the years 1981 until 1988. The director determined that the applicant failed show by a preponderance of the evidence that he has continuously resided in the United States for the requisite periods. The director concluded that the applicant is not eligible for adjustment of status under section 245A of the Act.

On appeal, counsel for the applicant asserts that he has submitted sufficient documentation to establish his eligibility for temporary resident status. Counsel asserts that the applicant has submitted multiple affidavits of residence, an employment letter, copies of utility bills, receipts and a copy of his California Identification Card issued March 10, 1976. Counsel asserts that the applicant could not provide the requested documents for the period of 1981 through 1988 because

he did not have employment authorization and a social security number during this time period. Counsel maintains that the documentation provided by the applicant supports by a preponderance of the evidence that he satisfies the statutory and regulatory criteria for continuous unlawful residence in the United States during the requisite period.

Counsel mentions that the applicant submitted a *copy* of his California Identification Card, issued March 10, 1976. The regulation at 8 C.F.R. § 245a.2(d)(6) notes that in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. Even if the applicant submitted the original of this document, it would only serve to establish his residence in the United States at some point prior to January 1, 1982. This document alone is not probative evidence of the applicant's residence in the United States during the *entire* requisite period.

Counsel states that the applicant submitted an employment letter to corroborate his residence in the United States during the requisite period. However, the employer letter in the applicant's record is dated January 28, 2005 and provides that the applicant has been employed at Super Ventas Auto Sales for a period of one and a half years. Therefore, this letter is not relevant to this proceeding as probative evidence.

Counsel also states that the applicant submitted multiple affidavits to corroborate his residence in the United States during the requisite period. However, these affidavits, as noted, lack considerable detail on the affiant's personal knowledge of the applicant's residence in the United States during the requisite period. These affidavits can collectively only be afforded minimal weight a reliable and probative evidence.

Finally, counsel notes that the applicant submitted copies of utility bills and receipts as evidence of his residence in the United States during the requisite period. A review of the record shows that the applicant has submitted only one receipt that relates to the requisite time period. The utility bills and receipt at issue are not credible evidence of the applicant's residence in the United States. As noted, the residential addresses on these documents differ from the residential address the applicant provided on his Form I-687. Furthermore, **the applicant has failed** to provide any evidence to corroborate the name on these documents, [REDACTED] as his alias. Therefore, these documents do not have any weight as credible and probative evidence.

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite

period 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.