



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-05-207-11309

Office: NEWARK, NJ

Date: MAY 14 2008

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:

[Redacted]

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

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the applicant was not consistent with regards to his residences during the requisite period. Here, she noted that the applicant stated in his interview with a Citizenship and Immigration Services (CIS or the Service) officer on January 27, 2006 that though he entered the United States by walking from Mexico into California, he resided in Chicago for two months and then continuously in New Jersey since that time. However, on his Form I-687 Application he indicated that he resided in Santa Maria, California continuously from 1981 until 2000. The director stated that she found that contradictions between the applicant's testimony and evidence that he submitted in support of his application did not allow him to establish, by a preponderance of the evidence, that he resided continuously in the United States from a date prior to January 1, 1982 until he attempted to file for legalization during the original filing period of May 5, 1987 to May 4, 1988 as the regulation at 8 C.F.R. § 245a.2(d)(5) requires applicants for adjustment of status to that of a Temporary Resident to do. Because of this, 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 pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits a brief and additional evidence in support of his application. He states that the fact that he does not remember exactly where he resided or where he was employed during the requisite period does not reflect negatively on his credibility. He asserts that his testimony given at the time of his interview was meant to clarify the information on his Form I-687.

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) 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 25, 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 to be: in Santa Maria, California from 1981. He did not show an end date associated with this residence. However, he indicated that he then resided in Asbury Park, New Jersey from 2000 to the date he signed his Form I-687. At part #31 where the applicant was asked to list all churches and organizations of which he was a member, he indicated that he was a member of Our Lady of Providence Church located on [REDACTED] e. There is no city or state listed with

this street address. However, he showed he was a member of this church from 1982 until the date he submitted his Form I-687. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences since his first entry into the United States. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was not employed during the requisite period. Here, he showed his first employment to be in Eatontown, New Jersey as a welder from 2001 until the date he signed his Form I-687. It is noted that the applicant, who was born in December 1967, would have been 13 years old at his time of entering the United States and 33 years old on the date he shows is associated with his first employment.

Also in the record are notes from the applicant's interview with a CIS officer pursuant to his Form I-687 application. Here, the record shows that at the time of that interview, the applicant stated that he first lived in Chicago with a friend for two months, then moved to Spring Lake, New Jersey, where he resided for approximately eight years, which would indicate that this was where he resided for the duration of the requisite period. He indicated that he then resided in Neptune, New Jersey where he resided for four years before moving to Belmar, Asbury Park, Ocean Grove, Eatontown and then back to Asbury Park, all in New Jersey. The applicant also indicated that he worked for ██████'s Restaurant in Spring Lake for six years in the 1980's. It is noted that this testimony is not consistent with what he showed to be his addresses of residence or his places of employment on his Form I-687, casting doubt on whether the applicant has fully and truthfully represented his residence and employment during the requisite period.

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).

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).

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).

Here, the applicant submitted the following documents that are relevant to the requisite period in support of his application:

Photocopies of two envelopes as follows:

- An envelope mailed from [REDACTED], residing at [REDACTED] in Santa Maria, California to the applicant's mother in Mexico on September 25, 1989. While this address of residence is consistent with what the applicant showed on his Form I-687, it is not consistent with a residence the applicant indicated he had at the time of his interview with a CIS officer.
- An envelope mailed to the applicant in Asbury Park, New Jersey. As the postmark date is not visible on his envelope, it is not clear that it was mailed to him during the requisite period.
- An envelope mailed to the applicant at [REDACTED] in Chicago, Illinois in 1989. This letter was sent by [REDACTED]. It is noted here that the applicant did not indicate that he resided in Chicago on his Form I-687. In his interview with a CIS officer he indicated that he only resided in Chicago for two months in 1981.
- An envelope mailed to the applicant at [REDACTED] in Chicago in 1989. This letter was sent by [REDACTED]. It is noted here that the applicant did not indicate that he resided in Chicago on his Form I-687. In his interview with a CIS officer he indicated that he only resided in Chicago for two months in 1981.

Here, none of the envelopes with visible dates shown on them correspond to the requisite period. However, it is noted that the applicant never showed that he resided in Chicago on his Form I-687 application. He indicated that he only resided there for two months in 1981 at the time of his interview with a CIS officer pursuant to that application. Though the envelope mailed to the applicant in Santa Maria corresponds to the address the applicant indicated he resided at on his Form I-687, it does not correspond to an address where the applicant stated he ever resided during his interview with a CIS officer. These inconsistencies cast doubt on whether the applicant has accurately indicated his residences to CIS either on his Form I-687 or at the time of his interview with a CIS officer.

Employment verification letters as follows:

- A letter from Custom Metal and Mechanical Corp that is not notarized and is dated December 29, 2004. In this letter, [REDACTED], who indicates he is the president of that company, states that in 1981-1982 the applicant was first noticed by the foreman of the company the applicant worked for at the time, which is unnamed. The letter goes on to say that the applicant worked for Custom Metal and Mechanical Corp part time from that time on. It is noted that the applicant was 13 years old in 1981. The letter further states that the applicant was hired full time in approximately 1999-2000. The applicant did not indicate that he ever worked for this company until 2001 on his Form I-687. Further, at the time of the applicant's interview with a CIS officer, he indicated he had worked for this company for the last five years, which would

indicate that he did not begin to work for this company until 2001, after the requisite period had ended.

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, [REDACTED] does not indicate how he knows the applicant began to work for him part time in 1981-1982. He does not state whether company records that can confirm this start date are available. He further fails to submit proof that his company was operational at that time. Because of its significant lack of detail, very little weight can be afforded to this letter as evidence that the applicant resided in the United States during the requisite period.

A letter from a church as follows:

- A letter dated December 28, 2004 from Our Lady of Providence Church located on [REDACTED] [REDACTED] in Neptune, New Jersey. This letter is signed by the pastor of that church. Here, the declarant states that the applicant resided in Spring Lake, New Jersey beginning in March 1981. Here, the pastor states that the applicant was a member of the Saint Anthony Claret Church in Lakewood in 1981. Here, he fails to indicate how he knows the applicant's start date as a member of another church. He states that in 1988 the applicant moved to Asbury Park and became a member of Our Lady of Providence Church. The pastor states that he met the applicant in 2000. Here, it is noted that the applicant indicated that he was a member of Our Lady of Providence church since 1981 on his Form I-687. It is further noted that as this letter attests to the applicant's membership in that church since 1988, it only pertains, at most, to five months of the requisite period. Lastly, it is noted that the pastor of this church was not working in that church until 2000. He does not indicate in this letter how he knows that the applicant became a member of the church in 1988. Because this letter does not state whether the church has records showing the applicant's membership dates and because this letter conflicts with what the applicant showed on his Form I-687 with regards to his residence and with the dates of his affiliation with this church, doubt is cast on whether the dates of the applicant's membership are accurately represented in this letter.

Affidavits and letters as follows:

- An untranslated letter that is notarized and is dated December 30, 2004. A translation of this letter, if there were one, would read approximately as follows, "To Whom it May Concern, I, [REDACTED] met [REDACTED] in the month of March in 1981 in the same restaurant where I continue to work, [REDACTED] s Spring Lake." Because the petitioner failed to submit a certified translation of this letter, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). **Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.**

Other documents:

- A photocopy of a California Identification Card issued to the applicant on October 13, 1989 that shows his address of residence as [REDACTED] in Santa Maria, California. It is noted that this address of residence is consistent with what the applicant showed on his Form I-687, but not with the testimony he gave at the time of his interview with a CIS officer or with the testimony in the letter from Our Lady of Providence Church.

The director denied the application on June 15, 2006. In her decision, the director noted the inconsistencies between the applicant's testimony at the time of his interview and what he showed on his Form I-687 with regards to his residence during the requisite period. The director stated that she found that contradictions between the applicant's testimony and evidence that he submitted in support of his application did not allow him to establish, by a preponderance of the evidence, that he resided continuously in the United States from a date prior to January 1, 1982 until he attempted to file for legalization during the original filing period of May 5, 1987 to May 4, 1988 as the regulation at 8 C.F.R. § 245a.2(d)(5) requires applicants for adjustment of status to that of a Temporary Resident to do.

It is noted here that the director raised the issue of class membership in the decision. However, since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

Here, the AAO notes that the director erred by incorrectly stating that because the applicant indicated that he never left the United States he was not eligible to apply for Temporary Residence Status under the Settlement Agreements. Here, the AAO notes that the CSS Settlement Agreement Class Membership definition on Page 1, Paragraph 1 of that agreement states that an individual is a class member if they were turned away by either the Immigration and Naturalization Service (INS) or a Qualified Designated Entity (QDE) during the original filing period because the INS thought that an individual had traveled outside of the United States. Therefore, it would be possible for an individual who did not actually travel outside of the United States to meet the class membership definition. However, it is noted here that this error did not cause the applicant harm.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority

has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant states that the director abused her discretion when she denied his application. It is noted here, that CIS does not have the authority to deny applicants for Temporary Resident Status on a discretionary basis. It is further noted that there is no evidence that indicates that the director did so in this case. The applicant asserts that he entered the United States before January 1, 1981 and then continuously resided in the United States since that time. He asserts that his testimony during his interview was not contradictory to the evidence in the record. He goes on to say that he has established, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. He submits a brief and additional evidence as follows:

- A brief dated August 3, 2006 from the applicant's attorney. In this brief, the applicant explains that he did attempt to file for legalization during the original filing period and was turned away when he was told he was ineligible for this benefit. Here, the applicant does not provide details as to why he was told he was ineligible. As was previously noted, the applicant's attorney correctly asserts that the fact that the applicant did not actually travel outside of the United States during the requisite period alone does not cause him to be ineligible to adjust status to that of a temporary residence pursuant to the settlement agreements. The brief goes on to say that the applicant was attempting to clarify information on his Form I-687 at the time of his interview. The brief states that the affidavits submitted by the applicant support this assertion. It further states that the letter from Custom Metal and Mechanical Corporation indicates that the applicant was a landscaper in the 1980's.
- A letter from [REDACTED] that is notarized and is dated June 30, 2006. The declarant states that he has known the applicant since 1981 when they lived at the same residence in Chicago for two months, between January 1981 and February 1981. Again, the AAO notes that the applicant, who was born at the end of December 1967, would have just turned 13 years old in January 1981. The declarant goes on to say that though he does not remember their address of residence in Chicago, he knows that it was on Chicago Avenue. Though he was not required to do so, the declarant submits photocopies of his Resident Alien Card, his United States Navy Identification Card and his Illinois Driver's License with this letter. His Illinois Driver's License shows he was born on September 2, 1965. Therefore, in January and February 1981 this declarant would have been 15 years old. Here, the declarant does not indicate whether an adult who was responsible for him and the applicant resided with them.
- A letter from Custom Metal and Mechanical Company that is notarized and dated July 1, 2006. Here, [REDACTED], the President of that company, states that he met the applicant in the mid 1980's. It is noted that in his previous letter, [REDACTED] indicated that he met the applicant in 1981-1982. He states that he observed him working doing odd jobs for a landscaper. He states that the applicant helped him several times over the years. However, here, he does not indicate when the applicant worked for him. Therefore, it cannot be determined that the applicant worked for [REDACTED] during the requisite period. Because of this and because the date that this

declarant met the applicant is not consistent in the two documents that he submitted, this letter can be afforded very little weight as proof that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] that is notarized and is dated June 26, 2006. Though she is not required to do so, the declarant submits a photocopy of her driver's license as proof of her identity. In her letter, she states that she first met the applicant when he lived in Spring Lake and did landscaping. She states that she has known the applicant for approximately 18 years. Though she attests to the applicant's character, she does not indicate when he worked for her. Because the declarant states she has known the applicant for approximately 18 years, it is not clear whether she met the applicant during the requisite period. Therefore, this letter can be accorded only very minimal weight as proof that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] that is notarized and is not dated. In this letter, the declarant states that he has known the applicant for more than ten years. Though the letter is not dated, the declarant submits a photocopy of a page of his passport as proof of his identity. Here, the page of the passport submitted indicates that this passport was issued to [REDACTED] in January 2000. Therefore, it can be concluded that this letter was written after 2000. This indicates that Mr. [REDACTED] cannot have met the applicant, who he states he has known for ten years, until after 1990. Because he did not meet the applicant until after the requisite period ended, this letter carries no weight as proof that the applicant resided in the United States during that time.

While it is noted that the applicant submitted a letter from [REDACTED] in her letter this declarant's letter is dated June 29, 2006 and in it she states that she has known the applicant for 15 years. Therefore, it is determined that this declarant did not meet this applicant until after the requisite period ended.

In summary, the applicant's submitted evidence that is relevant to his residence in the United States during the requisite period does not consistently show his residence or employment during that time. He has submitted evidence that he resided in California, including envelopes and a California Identification Card. However, in his appeal and during his interview with a CIS officer he did not indicate that he ever resided in California. He has submitted evidence that he lived and worked in the United States since he was 13 years old but he did not indicate whether there was a guardian or other responsible adult residing with him. Rather, he submitted a letter from [REDACTED] who stated that the applicant resided with him in 1981, when [REDACTED] would have been 15 years old. His two employment verification letters from Custom Metal and Mechanical Corporation are not consistent regarding when its president met the applicant. The letter from Our Lady of Providence Church is not consistent with the applicant's Form I-687 with regards to the dates of the applicant's church membership. The letter from [REDACTED] is not translated. Declarations from [REDACTED], and [REDACTED] do not clearly establish that any of these declarants met the applicant until after the requisite period ended. Further, the applicant's own inconsistent assertions regarding his residence and places of employment cast doubt on whether he resided in the United States for the duration of the requisite period. The applicant's statement and

the letter he submitted in support of his application lack credibility and probative value for the reasons noted.

In this case, 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 the applicant 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.