



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-011-10334

Office: LOS ANGELES

Date: SEP 02 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.

for Michael T. Kelly
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, on October 11, 2004 (together, the I-687 Application). 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 as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, several affidavits, and a statement. On appeal, counsel submits additional affidavits “with corroborative evidence that the affiants themselves were here in the United States since before 1982.” Counsel also states that the applicant has provided “sufficient evidence to prove that he was here in the United States between 1981 [and] 1988.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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).

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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits and letters; a copy of the applicant's birth certificate; and copies of the applicant's 2003 and 2004 income tax returns. The applicant's birth certificate and California driver's license are evidence of the applicant's identity, but do not

demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending Form I-687 Application as well as a prior Form I-687, signed and dated June 27, 1993.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- A notarized affidavit from [REDACTED] dated April 6, 2006. The affiant states that she has known the applicant since 1976 and that the applicant “has been in the United States since 1981.” The affiant also provides a current address for the applicant. Although the affiant states that she has known the applicant since 1976, the statement does not supply enough details to lend credibility to a 30-year relationship with the applicant. For instance, the affiant does not indicate where she first met the applicant in the United States, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Further, the affiant provides no specific information about the applicant’s residence and whereabouts in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- Two notarized affidavits from [REDACTED] signed July 8, 2005 and April 7, 2006. The record of proceeding also contains a declaration dated July 6, 2005 from [REDACTED] and his wife. In the joint statement, the declarants state that they have known the applicant since “December of 1981.” In the two affidavits, [REDACTED] states that he first met the applicant in 1981 “at my friends [REDACTED] and [REDACTED]’s house one day when we were invited over for dinner.” The affiant also states that his “friends told [him] that they let [the applicant] move into their back apartment.” The affiant states that he liked the applicant “right away” and that they “all came to know [the applicant] very well.” Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant or how frequently he had contact with the applicant. Further, the affiant provides no specific information about the applicant’s residence and whereabouts in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] signed April 7, 2006. The record of proceeding also contains a statement from [REDACTED] and her husband dated July 6, 2005. The affiant states that she has known the applicant since “December of 1981” when the applicant “moved into an apartment behind [her] friend [REDACTED]’s house.” The affiant states that “on several occasions [she and her] husband visited them at their home

at [REDACTED], Long Beach, California.” The affiant also states that she remembers the applicant “because he was always very friendly” and helped by “cooking and cleaning up, or playing with the kids.” Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how she dates her initial meeting with the applicant or how frequently she had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized affidavit from [REDACTED] dated June 27, 1993. The affiant states that she employed the applicant to perform duties as a “handyman and landscaping” from “January 5, 1982 to May 3, 1985.” The affiant states that at the time that the applicant was hired the applicant lived at [REDACTED], Long Beach, California.” Although the affiant states that she employed the applicant from 1982 to 1985, the affiant does not indicate how she dates the applicant’s employment or the source of the information. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant’s address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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). Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A letter on [REDACTED] letterhead signed by [REDACTED], President, and dated June 27, 1993. [REDACTED] states that the applicant was “employed by Golden Vans from May 1985 to December 1989.” The applicant’s job duties included “upholstery and general labor.” [REDACTED] also states that when the applicant was hired, the applicant lived at [REDACTED], Long Beach, California. Although the statement is on company letterhead, it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant’s address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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). Given these deficiencies, this letter has minimal probative value

in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit from [REDACTED] dated June 27, 1993. The affiant states that he first met the applicant at “a gas station on December 1981 [through] a mutual friend and after about two months later, we became [] very good friends.” The affiant also states that the applicant has lived in Long Beach, California from December 1981 until the present. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 12-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, or how he has “personal knowledge” that the applicant lived in Long Beach, California during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized form-letter affidavit from [REDACTED] a dated June 30, 1993. The affiant states that she has known the applicant since December 1981 and that “to the best of [her] knowledge, [the applicant] has [been] residing in this country since December 1981.” Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 12-year relationship with the applicant. For instance, the affiant does not indicate where she first met the applicant in the United States, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Further, the affiant provides no specific information about the applicant’s residence and whereabouts in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated April 4, 2006. The affiant states that she has “personally known and [has] been acquainted in the United States with [the applicant] since December 1981.” The affiant also states that “to the best of [her] knowledge, [the applicant] has been residing continuously in this country since December 1981.” Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate where she first met the applicant in the United States, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- Two notarized affidavits and letter from [REDACTED] (also known as [REDACTED]) dated June 30, 1993, June 29, 2005 and March 28, 2006 respectively. In her affidavits, the affiant states that the applicant has been a friend since December 1981 and that the applicant went to Mexico to visit his mother on August 18, 1987. The affiant adds that the applicant visited her in California at the end of August 1987. In her letter, she states that she and her family lived at [REDACTED] Long Beach, California and the house had a small one bedroom apartment in the backyard. She also states that her husband met the applicant before she did. The applicant was looking for a place to live at the time and so the affiant and her husband decided to rent their apartment to the applicant. The affiant adds that the applicant lived in the apartment for a few years. The affiant also states that the applicant was fourteen years old when she met him and that he paid the rent and utilities on time. Finally, the affiant states that when she and her family moved to a larger house, the applicant was older and decided to move in with a friend. Although the affiant states that she has known the applicant since 1981, the statements do not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how she first met the applicant, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. While she gives more detail in the letter, the affiant does not date the living situation she describes in the letter, does not refer to any schooling for the applicant as a teenager, and only generally describes the applicant's relationship with her children and his work ethic. She does not mention the presence of [REDACTED] in the apartment, who states that he lived at the same address as the applicant as his roommate during this time period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit and letter from [REDACTED] dated June 29, 2005 and March 28, 2006 respectively. In his affidavit, [REDACTED] states that the applicant "rented an apartment from [him] in 1981" and "always paid on time." The affiant states that he has known the applicant since 1981 and that the applicant "is a good friend." He also states that the applicant lived with him "for a few years" and he came to think of the applicant "as if he were a part of the family." The affiant adds that the applicant participated in "lots of dinners and barbeques" with him. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how he first met the applicant, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- Two notarized affidavits from [REDACTED] dated June 27, 1993 and June 18, 2005. The affiant states that the applicant lived with him at [REDACTED] Long Beach, California from December 1981 to April 1985.” The affiant also provides a current address for the applicant. Although the address provided by the affiant is consistent with the addresses listed in the applicant’s Form I-687 from December 1981 to April 1985, this information raises questions about the testimony provided in previous affidavits and letters from [REDACTED]. In their statements, Mr. and Mrs. [REDACTED] state that the applicant lived in their backyard apartment for a few years beginning in 1981. Mr. and Mrs. [REDACTED] stated that their address at the time was [REDACTED], Long Beach, California. However, Mr. and Mrs. [REDACTED] never mention [REDACTED]s in their statements nor do they state that the applicant had a roommate. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the affiant states that he lived with the applicant from 1981 to 1985, the statement does not supply enough details to lend credibility to a relationship with the applicant. For instance, the affiant does not indicate when he first met the applicant, how he came to live with the applicant, or how much he paid for his share of rent and expenses. Further, neither of [REDACTED] affidavits mentions living in the [REDACTED] family’s backyard apartment. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States in December 1981. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a Form I-72, Request for Additional Evidence on June 13, 2005. The director denied the application for temporary residence on March 13, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel submits additional affidavits “with corroborative evidence that the affiants themselves were here in the United States since before 1982.” Counsel also states that the applicant has provided “sufficient evidence to prove that he was here in the United States

between 1981 [and] 1988.” As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the requisite period seriously detracts 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 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.