



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-104-11253

Office: LOS ANGELES

Date: **SEP 10 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:



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 "Robert P. 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, 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 denied the application because she found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found it more likely than not that the applicant was residing outside of the United States during the requisite period, based on the birth dates of the applicant's children and the dates that those births were registered with the government in Mexico.

On appeal, counsel for the applicant states that the director erred in failing to apply the appropriate "preponderance of the evidence" standard and in failing to provide the applicant "the opportunity to clarify any facts or issues the adjudicating officer had concerns over." The applicant has also submitted several updated witness statements in support of his appeal. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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.

¹ 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).

See 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).

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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 12, 2006. At part #32 of the application, where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed absences in June 1982; December 1982 to January 1983; and May 1987 to June 1987. However, the applicant testified before an immigration officer, and states on appeal, that he departed the United States in May 1982, June 1985 and June 1987 and that he was absent from the United States for approximately thirty days following each departure. These are material discrepancies which detract from the credibility of the applicant’s claim.

As noted above, the director relied on birth records of the applicant’s Mexican-born children in reaching her decision. Specifically, the director noted that the dates that the birth dates of the applicant’s children did not correspond to the applicant’s admitted absences from the United States during the requisite period. Based on these inconsistencies the director stated “[i]t appears that you were residing outside the U.S. longer, and/or you have exited the U.S. more times than

you want to admit.” Counsel argues that the applicant was not given adequate opportunity to explain the inconsistencies, and further argues that the evidence shows that the applicant was residing in the United States during this time. Specifically, counsel points to the updated witness statements from [REDACTED] and [REDACTED]. These witnesses claim to have personal knowledge that the applicant was in the United States at the time of his children’s births in 1983 and 1984. Further, [REDACTED] claims to have personal knowledge that the applicant’s brother brought the birth registration documents to the United States for the applicant to sign.

We find that the applicant was given reasonable opportunity to present evidence on his behalf in order to establish continuous unlawful residence in the United States throughout the requisite period. The applicant submitted evidence with his Form I-687 application, testified on his own behalf before an immigration officer, and provided additional evidence in support of his appeal. Included in the evidence submitted by the applicant were copies of the birth records for two of his children born in Mexico. Specifically, the applicant submitted copies of the birth records of his daughter, [REDACTED], born March 6, 1983, and of his son, [REDACTED], born October 11, 1984. Both of these documents list the applicant’s residence as “[REDACTED].” Thus, according to these documents, which were signed by the applicant, the applicant was residing in Mexico in 1983 and in 1984. This detracts from the credibility of the applicant’s claim to have resided in the United States continuously throughout the requisite period. Although the applicant has submitted affidavits and statements from witnesses claiming to have personal knowledge that the applicant resided in the United States since 1981, these applicant has failed to resolve the discrepancy between these statements and the birth records.

The applicant submitted the following affidavits that specifically discuss his places of residence during the requisite period:

- Two affidavits from [REDACTED] one dated January 3, 2007 and an earlier affidavit dated June 23, 2001. The affiant states that the applicant resided with her and her husband from June 1981 to July 1981. The affiant states on both affidavits that the applicant resided with them at [REDACTED], Anaheim, California. The applicant did not list this address on his Form I-687 application. Instead, the applicant listed his address as [REDACTED], Anaheim, California from June 1981 to June 1981. This is a material inconsistency which detracts from the credibility of the affidavit.
- Two affidavits from [REDACTED], one dated January 3, 2007 and an earlier one dated June 9, 2001. The affiant states that the applicant lived with him at [REDACTED] in Anaheim, California from June to July 1981. As noted above, this conflicts with the information provided by the applicant on his Form I-687 application. This is a material inconsistency which detracts from the credibility of the affidavit.
- Two affidavits from [REDACTED], one dated January 2, 2007 and an earlier one dated January 6, 2001. The affiant states that he met the applicant in June 1981 at

church, and that they applicant resided with him at [REDACTED] in Cudahy, California from August 1981 to April 1982.

- Two affidavits from [REDACTED] one dated January 2, 2007 and the other dated January 29, 2001. The record also contains a letter from [REDACTED] dated October 20, 1994. The affiant states that the applicant is his second cousin and that the applicant resided with him from May 1982 until April 30, 1985. The affiant also states that, following this period, he communicated with the applicant at family gatherings and other functions.
- An affidavit from [REDACTED] dated June 6, 2001. The affiant states that the applicant “rented from my property” at [REDACTED] in Cudahy, California from May 1985 until July 1986. The record also contains an affidavit from [REDACTED] dated January 17, 2001. The affiant states that he met the applicant in a church group and that the applicant “came to live at my residence located at [REDACTED]” in Cudahy, California from May 1985 until June 1986.
- Two affidavits from [REDACTED] one dated January 3, 2006 and an earlier affidavit dated January 13, 2001. In the 2001 affidavit, the affiant states that he and the applicant attended the same church group and that the applicant resided with him from July 1986 until September 1989. In the 2006 affidavit, the affiant again states that he met the applicant through a church youth group, but he does not indicate that the applicant resided with him at any point. However, in the 2006 affidavit the affiant lists his address as [REDACTED] in Bell Gardens, California from 1986 to 1990. The applicant listed this as his address from July 1986 to September 1989 on his Form I-687 application.

Counsel argues that these affidavits establish, by a preponderance of the evidence, that the applicant resided in the United States in an unlawful status for the duration of the requisite period.

The weight given to affidavits depends on the totality of the circumstances. As stated in *Matter of E-M-*, *supra* at 81, “[m]ost important is whether the statement of the affiant is consistent with the other evidence in the record.” As noted above, the affidavits from [REDACTED] and [REDACTED] are inconsistent with information provided by the applicant on his Form I-687 application. In addition, [REDACTED] and [REDACTED] all claim that the applicant resided continuously in the United States throughout the requisite period. These affidavits are inconsistent with other evidence in the record. Specifically, as noted above, the birth records submitted by the applicant indicate that he was residing in Mexico when his children were born in March of 1983 and October of 1984. Because of this inconsistency, these affidavits will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also submitted the following affidavits and written statements in support of his application:

- Two affidavits from [REDACTED] one dated January 2, 2007 and an earlier one dated January 5, 2001. The affiant states that he worked with the applicant from June 1982 until September 1985 in “construction repairs.” The affidavits lack probative details such as the nature or location of the work performed by the affiant and the applicant. The affiant also claims to have knowledge that the applicant was in the United States from 1982 through 1988 because, in addition to working with the applicant, he and the applicant would see each other at social functions and at church. The affiant fails to provide probative details such as such as the nature and frequency of his contact with the applicant. In addition, this statement is contradicted by the birth records which indicate that the applicant resided in Mexico in 1983 and in 1984. Finally, the affiant claims to have personal knowledge of the birth of the applicant’s children in Mexico, and of the fact that the applicant’s brother brought the child registration documents to the applicant in the United States for signatures in 1983 and again in 1984. However, the affiant fails to explain the basis of his knowledge of these events. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Two affidavits from [REDACTED], one dated January 2, 2007 and an earlier one dated May 8, 2001. The affiant states that he first met the applicant in January of 1983 when the affiant visited his brother-in-law, [REDACTED]. The affiant states that he would see the applicant at family gatherings and other social functions after that. The affiant does not claim to have personal knowledge of the applicant’s residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED]’s affidavit dated August 31, 2001. The affiant states that she has known the applicant since 1984 and that she has knowledge that he traveled to Mexico on June 8, 1985, and returned in July. The affiant does not claim to have personal knowledge of the applicant’s residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Two affidavits from [REDACTED], one dated January 1, 2007 and an earlier one dated June 16, 2001. The affiant states that he is the applicant’s second-cousin and he has known the applicant since their childhood in Mexico. The affiant further states that he first had contact with the applicant in the United States in June of 1981, and that he saw the applicant on a weekly basis at family gatherings and other social functions after that. The affiant provided little relevant, verifiable information, such as, for example, where the applicant lived and worked during the requisite period. Given this lack of detail, these

affidavits can only be afforded limited weight as corroborating evidence of the applicant's residence in the United States during the requisite period.

- A declaration from [REDACTED]. The declarant states that she met the applicant January 1983 through her uncle, [REDACTED]. The declarant states that she and the applicant attended the same church and that they would occasionally socialize. The declarant does not claim to have personal knowledge of the applicant's residence in the United States during the requisite period. The declarant does not provide details regarding the frequency or nature of her contact with the applicant during the requisite period. Given these deficiencies, this declaration has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], pastor of St. Gertrude Church, dated May 7, 2001. The letter states that the applicant was a registered member of the parish from 1984 to 1992. This letter fails to comply with the regulation for attestations by churches in that it fails to state the address where the applicant resided during the membership period and fails to establish how the author knows the applicant. 8 C.F.R. § 245a.2(d)(3)(v). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M- 20 I&N Dec. at 81.* However, the letter lacks probative details such as the origin of the information being attested to. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted photocopies of the following documents to establish his residence in the United States during the requisite period:

- Form 1040 Federal tax return for 1985.
- Form W-2 Wage and Tax Statement for 1985 issued to the applicant by Furniture Industries.
- Form W-2 Wage and Tax Statement for 1985 issued to the applicant by HLK Corporation.
- A California identification card issued to the applicant on October 31, 1985.
- Two money order receipts signed by the applicant. One receipt is dated June 2, 1985 and the other is dated October 15, 1985.
- Copies of utility bills from Southern California Edison and Southern California Gas Company which bear the applicant's name and address. The dates on the bills range from March 1986 to July 1986.

- A registered mail receipt bearing the applicant's name and address which has a post mark dated March 1, 1986.
- Form W-2 Wage and Tax Statement issued to "[REDACTED]" by Maxwell Products. The address for "[REDACTED]" is listed as "[REDACTED]", Lynwood, CA 90262. The applicant did not list this address on his Form I-687 application. According to the Form I-687 application, the applicant was residing at "[REDACTED]" at the time that the Form W-2 would have been issued.
- Three pay stubs from Maxwell Products issued to "[REDACTED]" dated November 26, 1988 and December 24, 1988 and December 31, 1988.
- Photographs of the applicant allegedly taken in the United States in 1981. There is nothing in the photographs themselves that indicate the date or location that they were taken.

These documents are insufficient to establish the applicant's residence in the United States throughout the requisite period. None of the documents are dated before 1985. Thus, these documents do not address the fact that the birth records show that the applicant was residing in Mexico in 1983 and 1984.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory information in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.