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FILE:

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MSC 05 246 11738

Office: LOS ANGELES

Date:

SEP 23 2008

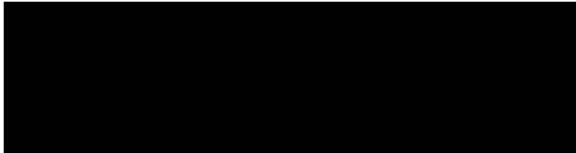
IN RE: Applicant:



APPLICATION:

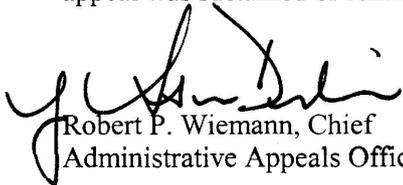
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period. The director's finding purported to be based on a statement the applicant made during a CIS interview. On appeal, counsel submitted a brief and additional evidence.

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 Immigration and Nationality Act (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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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. 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.

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the Form I-687 application, which the applicant signed on April 7, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that from April 1970 to January 1981 he lived at [REDACTED] in Laguna Beach, California, that from January 1981 to February 1982 he lived at [REDACTED] Beach, that from February 1982 to June 1992 he again lived at [REDACTED] Laguna Beach, California, and that from June 1992 to the date of that application he lived at [REDACTED].

Subsequently, at his Legalization interview, the applicant amended that residential history, adding that he lived at [REDACTED], California from June 1970 to October 1973, and indicating that during the entire period from July 1979 to June 1992, he lived at the [REDACTED] address in Laguna Beach. The applicant stated that he then moved to [REDACTED] in Laguna Beach, California. That residential history conflicts with the history the applicant provided on the Form I-687 application. The record contains no explanation of that discrepancy.

Previously, on a G-325 Biographic Information form, the applicant stated that he lived at the [REDACTED] address from June 1985 to February 1993, and at the [REDACTED] from February 1993 through October 11, 1994, the date of that form. That residential history conflicts with the residential history provided on the Form I-687 application and the residential history the applicant provided at his legalization interview.

On a previous Form I-687 application the applicant stated that he lived at the [REDACTED] address from February 1979 to January 1991, and at [REDACTED] in Laguna, California, from January 1991 to the date of that application. This reported residential history also purported to be an exhaustive list of the applicant's residences since he entered the United States. This residential history conflicts with each of the three conflicting residential histories subsequently provided.

The conflicts between the various residential histories the applicant has provided cast doubt on the accuracy of all of the applicant's assertions.

On the instant Form I-687 application, the applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from February 1978 to March 2000 as a cook at Family Restaurant, at [REDACTED] Laguna Beach, California. This office notes that the restaurant's address is the same as one of the home addresses at which the applicant claimed, on both of the Form I-687 applications, to have lived, but disclaimed on the G-325 and at his legalization interview.

On the previous Form I-687, the applicant stated that he worked for [REDACTED]'s Family Restaurant from July 1979 to the date of that application. That emplo ent history conflicts with the claim on the instant Form I-687, that he began working for [REDACTED] in February 1978 and ceased working there during March of 2000. This conflict further weakens the reliability of all of the applicant's assertions.

The applicant was required, on the instant Form I-687 application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he had left the United States from March 1987 to May 1987 and from December 2000 to January 2001. The applicant claimed no other absences.

At a subsequent interview, the applicant added another absence to that list. The applicant stated that he had also been absent from the United States during November 1997.

On the previous Form I-687, the applicant stated that his only absence from the United States since January 1982 was a trip to Mexico from November 15, 1987 to December 10, 1987.

At an interview conducted on September 20, 1994 the applicant stated that he left the United States during January 1984, during September 1985, and from November 1987 to December 1987. The

various conflicting accounts the applicant provided pertinent to the his absences from the United States cast yet more doubt on the accuracy of all of the applicant's assertions.

The pertinent evidence in the record is described below.

- The record contains a letter dated April 20, 1993 that appears to be signed by [REDACTED]. [REDACTED] states that she is the manager of Ocean House at [REDACTED] Drive in Laguna Beach, California, and that the applicant lived there from August 1979 to December 1991 with the exception of his trips to Mexico. The statement that the applicant lived at the [REDACTED] address from August 1979 to December 1991 conflicts with all four of the applicant's conflicting versions of his residential history. [REDACTED] letter will therefore be accorded no evidentiary weight.

Further, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The record contains an affidavit, dated December 7, 2004, from [REDACTED]. That affidavit does not contain [REDACTED] address or phone number. [REDACTED] stated that he has known the applicant since 1980, when the applicant began working as a waiter at Tomasito's restaurant, and has been the applicant's next-door neighbor and personal friend for 24 years. The affiant did not state where the applicant lived during those 24 years.

The affiant indicated that the applicant began working at Tomasito's restaurant during 1980. The applicant, however, indicated on the instant Form I-687 that he began working there during February of 1978, and on the previous Form I-687 that he began working there during July of 1979. In either event, [REDACTED] affidavit is inconsistent with this aspect of the applicant's conflicting assertions. Further, the affiant implied that the applicant has lived in the same location from 1980 to 2004, which conflicts with all four of the applicant's conflicting versions of his residential history. Because of these conflicts with the applicant's assertions, [REDACTED] affidavit will be accorded no evidentiary weight.

As was noted above, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The conflict between the applicant's assertions and the evidence provided reflects badly not only on this particular item of evidence, but on all of the applicant's evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92.

¹ The declarant's signature is not perfectly legible and her name is not printed anywhere on the letter.

- The record contains an affidavit dated September 12, 1994 from [REDACTED], who stated that his address is [REDACTED], California. Mr. [REDACTED] stated that he has known the applicant since 1979 and that they were roommates for approximately 10 years. The affiant did not state when that was or where they lived. In any event, the affiant did not state whether the applicant resided in the United States during the requisite period and the affidavit is therefore not directly relevant to any fact material to the approvability of the instant application.
- The record contains an affidavit, dated November 16, 2004, from [REDACTED] who states that he has known the applicant since they worked together for five years at [REDACTED]'s Restaurant beginning in 1980.² The affiant stated that he and the applicant have been good friends during the ensuing 24 years. That affidavit thus implies, without actually so stating, that the applicant lived in the United States from sometime during 1980 to sometime during 1985, but does not indicate that he lived in the United States during any other time. Further, that affidavit does not even purport to attest to continuous, rather than sporadic, residence at any time. This affidavit is not relevant to any material issue in this matter.

The record contains form affidavits dated October 10, 1994 from [REDACTED] Compton, California and [REDACTED] of Huntington Park, California. The affiants stated that the applicant lived in Manhattan Beach, California from February 1970 to June 1975 and in Laguna Beach, California from June 1975 through the date of those affidavits. [REDACTED] stated that he knew this because, “[The applicant] and me was working in the field in 1970 through 1973 until we change job.” [Errors in the original.] [REDACTED] stated that she knew this because “I meet him when was doing agricultural work in Visalia CA in 1970 before came be a cooker at present time. [Errors in the original.]

In the residential history he provided on the instant Form I-687 the applicant did not indicate that he had ever lived at Manhattan Beach. At his legalization interview he indicated that he had lived there from June 1970 to October 1973. The statement that he lived there from February 1970 to June 1975 conflicts with both of those accounts. Further, in his ostensibly exhaustive history of his employment in the United States, the applicant did not mention working in agriculture. The affidavits of [REDACTED] conflict with the histories provided by the applicant himself, and will be accorded no evidentiary weight.

- The record contains a form affidavit, dated November 17, 2004, from [REDACTED] who stated that he knows that the applicant has lived in the United States since July 1980 because the applicant worked at [REDACTED] restaurant, where the affiant was a customer. The affiant further stated that the longest period during which he can remember not seeing the applicant

² This assertion is consistent with the applicant’s assertion, on the Form I-687, that he began working for [REDACTED] during 1978. That is, although the applicant commenced working there during 1978 or 1979, the affiant may not have worked there until 1980.

is no more than one month. That affidavit, standing alone, would be accorded only slight evidentiary weight. Because of the various contradictions between the applicant's assertions and his evidence, however, that affidavit is accorded no evidentiary weight pursuant to *Matter of Ho*, 19 I&N Dec. 582, 591-92.

- The record contains a form affidavit, dated November 20, 2004, from [REDACTED] of Huntington Beach, California. The affiant stated that he is able to confirm that the applicant lived in Laguna Beach, California since February 1980 because they worked for the same company. The affiant did not identify that company or the period during which the applicant worked for it. Because of the lack of any detail this affidavit, even standing alone, would be accorded no evidentiary weight. Further, even if, standing alone, it were accorded some evidentiary weight, its credibility and reliability would be destroyed by the conflict between the applicant's assertions and the other evidence in the record.
- The record contains an affidavit, dated November 16, 2004, from [REDACTED] [REDACTED] stated that he has been a good friend of the applicant since he and the applicant worked for [REDACTED]'s restaurant together for about five years beginning in 1980. That affidavit contains no indication that the applicant continuously resided in the United States during the requisite period and will be accorded no evidentiary weight for that proposition.
- The record contains a form affidavit from [REDACTED] of Laguna Hills, California. That affidavit states that the applicant has resided in the United States at Laguna Beach, California since March 1987. The affiant also stated that he met the applicant during July 1985 when they worked together at [REDACTED] Restaurant in Laguna Beach. The affiant further stated that the longest period of time since the applicant's entry that the affiant has not seen the applicant is one month.

Why the affiant, who states that he met the applicant during July of 1985, and worked with him beginning during that month, is only able to attest to the applicant's continuous residence in the United States beginning in March of 1987 is unclear to this office. Because of this affidavit's apparent internal inconsistency, the affidavit of [REDACTED] is accorded no evidentiary weight.

- The record contains an affidavit, dated November 11, 2004, from [REDACTED] a professor at Orange Coast College in Costa Mesa, California, who states that he lives on the same street as the applicant, but without identifying that street. The affiant stated that he has known the applicant since 1985, when the applicant worked as a food server at [REDACTED]'s Restaurant in Laguna Beach, California. The affiant did not indicate that the applicant resided continuously in the United States during any part of the requisite period.
- The record contains a notice from the U.S. Internal Revenue Service (IRS), dated July 25, 1983, addressed to the applicant at the [REDACTED]. That notice indicates that a portion of the applicant's overpaid taxes for the 1982 tax year had been applied to taxes owed for the 1977 tax year. That notice is accorded great evidentiary value for the

proposition that the applicant filed U.S. tax returns for the 1977 and 1983 tax years, which indicates that he had U.S. income during those years, which, in turn, demonstrates that he was likely in the United States during at least a portion of both of those years.

The record contains the applicant's social security statement, issued on December 6, 2005 by the Social Security Administration (SSA). That statement shows that the applicant earned income in the United States during various years beginning in 1973. That statement does not, however, show any earnings during 1981 and 1982. That the applicant earned income in the United States during the other years in the period of requisite residence indicates that he was in the United States during at least some portion of those years. The social security statement is accorded great credibility for that assertion.

The record contains another printout from the SSA, dated October 19, 1994, of the applicant's FICA earnings from 1973 to 1992. It shows that the applicant earned FICA wages during most years of the period of requisite residence, from 1981 to 1988. It shows, however, that the applicant had no FICA earnings during 1981 to 1982. Further, the greatest amounts shown were \$4,950 during 1987 and \$6,231 during 1988. During the years from 1983 to 1986 the applicant earned FICA wages of between \$1,243.41 and \$2,880. Those amounts appear to show that the applicant was in the United States during some portions of those years, but are inconsistent with full-time year-round employment.

- The record contains printouts from IRS showing that the applicant filed personal tax returns for 1982, 1983, 1985, 1986, 1987 and 1988. Those printouts show adjusted gross income (AGI) between \$2,880 and \$6,231 during those years. The 1982 printout shows AGI of \$4,184 during that year. Although those amounts appear to be inconsistent with full-time year-round employment, the applicant's income during those years indicates that he was likely³ in the United States during at least some portion of those years and the IRS printout is accorded great evidentiary weight as support for that proposition. The discrepancy between the 1982 IRS printout, which shows AGI of \$4,184, and the various other government documents that show no income during 1982, is unexplained.

The record contains photocopies of various postal money order receipts, receipts for other money orders, and receipts for sending registered mail. Some of those receipts give an address in Zacatecas, Mexico for the applicant, whereas others show that he lived at the 180 North Coastal Highway address or the [REDACTED]. The money orders were made payable to various people. Some of the receipts are dated after the end of the period of requisite residence and have no direct relevance to any material issue in this case. The dates on some of the documents are unclear, such that whether they relate to the period of requisite residence is unknown to this office. The money orders and registered mail

³ Although a taxpayer may have AGI that is not related to employment in the United States and does not require his presence in the United States, interest from income, dividends, and capital gains, for instance, this office doubts that occurred in the instant case. More likely, the applicant reported some self-employment income during that year that he did not report to the SSA.

receipts with illegible dates are accorded no evidentiary weight. Similarly, some of the money order receipts do not indicate that the applicant, rather than some other person, bought them, and are accorded no evidentiary weight.

The registered mail receipts that have legible dates during the requisite period are accorded great evidentiary weight for the proposition that the applicant was in the United States on those dates. Those dates are November 3, 1980, January 7, 1981, February 10, 1981, February 18, 1981, March 21, 1981, March 25, 1981, April 27, 1981, June 1, 1981, June 10, 1981, June 16, 1981, August 17, 1981, December 14, 1982, January 20, 1983, February 17, 1983, July 6, 1983, July 29, 1983, September 6, 1983, November 8, 1983, September 13, 1984, June 27, 1985, August 19, 1985, October 16, 1985, July 1, 1986, May 8, 1987, May 26, 1987, June 19, 1987, July 22, 1987, August 7, 1987, October 13, 1987, November 17, 1987, January 12, 1988, January 26, 1988, February 29, 1988, and April 25, 1988.

The U.S. postal money orders were clearly bought in the United States and those with legible dates within the period of requisite residence are accorded great evidentiary weight for the proposition that the applicant was in the United States on the dates of purchase. Those dates are August 10, 1972, August 6, 1980, January 7, 1981, October 4, 1982, October 28, 1982, July 29, 1983, December 15, 1983, September 4, 1984, September 13, 1984, July 11, 1985, August 19, 1985, September 9, 1985, October 16, 1985, December 19, 1985, January 16, 1986, June 24, 1986, July 1, 1986, September 4, 1986, May 6, 1987, May 8, 1987, May 26, 1987, June 19, 1987, August 7, 1987, December 28, 1987, January 26, 1988, February 29, 1988, and March 30, 1988.

The other money orders are accorded slight evidentiary weight for the proposition that the applicant was in the United States on their dates, which are September 19, 1979, October 9, 1979, November 1, 1979, April 9, 1980, February 10, 1981, June 10, 1981, June 16, 1981, September 6, 1983, January 16, 1986, October 16, 1986, and January 16, 1986.

That the applicant listed a Mexican address on some of the receipts, however, suggests that he maintained at least a part-time residence in Mexico and lived in Mexico during at least part of the period of requisite U.S. residence, which supports the inference that he did not continuously reside in the United States during the requisite period.

Further, this office notes that the applicant submitted no receipts for the 264-day period from December 15, 1983 to September 4, 1984; the 287-day period from September 13, 1984 to June 27, 1985; the 159-day period from January 16, 1986 to June 24, 1986; or the 202-day period from October 16, 1986 to May 6, 1987.

- The record contains a partially legible copy of a 1977 W-2 form showing wages paid to the applicant during that year. The wage amount is illegible. The employer named appears to be "Bill's Taco." The address shown for the applicant is in Hermosa Beach, California, a location at which the applicant did not claim, on any of his conflicting residential histories, to have lived.

- The record contains copies of 1980, 1987, and 1988 W-2 forms that Tomasito's restaurant issued to the applicant. Those W-2 forms indicate that the applicant earned \$688.20, \$4,950, and \$6,291 working at that restaurant during those years, respectively.
- The record contains a copy of the applicant's 1982 Form 540A California Resident Income Tax return. That return gives the applicant's address as [REDACTED] and states that the applicant had total income of \$4,184.35 during that year. An accompanying 1982 W-2 form shows that all of that income was paid to the applicant by "Picasso's," whose address appears to have been [REDACTED] California. This office notes that the applicant did not claim, on any of his conflicting versions of his employment history, to have worked for "[REDACTED]" during 1982. Further, an income of \$4,184.35 does not support the proposition that the applicant resided continuously in the United States during that year. Although the W-2 form will be accorded moderate evidentiary weight, it provides no support for the assertion that the applicant continuously resided in the United States during the requisite period.
- The record contains a copy of the applicant's 1983 Form 1040A U.S. Individual Income Tax Return. On it, the applicant reported total income of \$4,380. A copy of a W-2 form attached to that form shows that [REDACTED]'s restaurant paid the applicant income of \$2,400 during that year. Two pay statements in the record show that the applicant worked 40 hours per week during each of two weeks, and was paid \$4 per hour for a weekly total of \$160. This office notes that a \$2,400 total at \$160 per week equates to exactly 15 weeks of work.
- The record contains a copy of the first page of the applicant's 1985 Form 1040 U.S. Individual Income Tax Return. That return shows that the applicant declared total income of \$2,880 during that year.
- The record contains a copy of the first page of the applicant's 1986 Form 1040 U.S. Individual Income Tax Return. That tax returns shows that the applicant declared total income of \$4,224 during that year.
- The record contains a copy of the applicant's 1987 Form 1040A U.S. Individual Income Tax Return. That return shows that the applicant earned total income of \$4,950 during that year. An attached W-2 form shows that Tomasito's restaurant paid that amount to the applicant.
- The record contains a copy of the applicant's 1988 Form 1040A U.S. Individual Income Tax Return. That tax return shows that the applicant declared total income of \$6,231 during that year. An attached W-2 form shows that Tomasito's restaurant paid that amount to the applicant.
- The record contains an affidavit, dated December 2, 2004, from [REDACTED], who stated that the applicant worked at her business, Tomasito's Restaurant, from 1979 to 1995.

As was noted above, 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, declare whether the information was taken from company records, identify the location of such company records and state whether such records are accessible, or, in the alternative state the reason why such records are unavailable.

affidavit does not state the applicant's address during his employment, does not state the exact period of employment and whether that period included any layoffs or was continuous, and does not declare whether the information provided was taken from company records available for inspection, or, in the alternative, state why those records are unavailable.

Because 8 C.F.R. § 245a.2(d)(3)(vi)(L) indicates that any relevant document may be submitted, this office will consider [REDACTED] affidavit. Even standing alone, however, that affidavit would have been accorded less evidentiary weight than if it had complied with the governing regulation.

This office notes, however, that the applicant indicated, on the instant Form I-687 application, that he began working at [REDACTED] restaurant during February of 1978 and ceased working there during March of 2000. Because the information in [REDACTED] affidavit conflicts with the applicant's own version of his employment history, provided on the Form I-687 application, the affidavit of [REDACTED] will be accorded no evidentiary weight.

Again, this conflict between the applicant's assertions and the evidence not only destroys the evidentiary value of this particular affidavit, but casts doubt on all of the applicant's assertions and decreases the evidentiary value of all of the evidence in the record.

- The record contains a letter dated October 7, 1994, from [REDACTED] who also represents that he owns [REDACTED]'s Family Restaurant. [REDACTED] stated that the applicant has worked at that restaurant as a "cooker" since 1978 and that the position is full-time all year.

As was noted above, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. [REDACTED] letter did not state the applicant's address at the time of the alleged employment, did not show periods of layoff or explicitly state the applicant's duties, and did not state whether the information he provided was taken from company records, whether the salient company records were available for inspection, or, in the alternative, why those records are not available.

Because 8 C.F.R. § 245a.2(d)(3)(vi)(L) indicates that any relevant document may be submitted, this office will consider [REDACTED]'s affidavit. Even standing alone, however, that affidavit would have been accorded less evidentiary weight than if it had complied with the governing regulation.

That the applicant declared no income from [REDACTED]'s restaurant during 1982⁴ does not support the statement by [REDACTED] that the applicant worked at Tomasito's restaurant full-time all year since 1978.

Further, this office notes that the 1980, 1983, 1985, 1986, 1987 and 1988 W-2 forms that [REDACTED] issued to the applicant indicates that he made only \$688.20, \$4,380, \$2,880, \$4,224, \$4,950, and \$6,291 during those years, which also seems inconsistent with full-time year-round employment.

More specifically, a comparison of the applicant's 1983 pay stubs from [REDACTED] and his 1983 W-2 form, also from [REDACTED], appears to show that the applicant worked approximately 15 weeks for [REDACTED]'s during that year.⁵ This office is unable to reconcile that equation with the statement by [REDACTED] that the applicant worked at [REDACTED]'s restaurant full-time year-round since 1978.

Because of the various discrepancies between [REDACTED] employer verification letter and the other evidence in the record, [REDACTED]'s employer verification letter will be accorded no evidentiary weight.

- The record contains an undated note, also from [REDACTED]. In that letter [REDACTED] stated that he has known the applicant for 18 years, first when he was employed by [REDACTED] Taco Bill's Mexican Restaurant, at which [REDACTED] was the manager, and then, beginning in 1977, when [REDACTED] had his own restaurant. [REDACTED] stated that "[the applicant] . . . worked for me on and off until the last eight years when he started working full[-]time from March through December.

Again, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) requires that employer verification letters include the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The undated letter from [REDACTED] complies with none of these requirements.

⁴ See 1982 California tax return and W-2 form, above.

⁵ See 1983 U.S. tax return and W-2 form, above.

Because 8 C.F.R. § 245a.2(d)(3)(vi)(L) indicates that any relevant document may be submitted, this office will consider [REDACTED]'s note. However, that note will be accorded less evidentiary weight than it would have been accorded if it had complied with the governing regulation.

In his ostensibly exhaustive list of all of the jobs he has held in the United States since his first entry, the applicant did not claim employment for [REDACTED] Taco Bill. Thus, the employment history stated in [REDACTED] note conflicts with the employment history provided by the applicant. That the applicant may have worked for that company is supported, however, by the W-2 form from "Taco Bills."

However, [REDACTED] implied, at least, in his October 7, 1994 letter, that the applicant had worked for him full-time year-round since 1978. In this undated letter, [REDACTED] explicitly stated that the applicant's employment was full-time only during the eight years preceding the unstated date of that letter.

Because this note is undated, this office is unable to compute the years during which Mr. [REDACTED] is asserting that the applicant worked part-time and when he became a full-time employee. [REDACTED] note does not provide any assurance that the applicant continuously resided in the United States during those unidentified years when that the applicant worked "on and off." This undated note does not support that the applicant resided continuously in the United States during any part of the requisite period.

- The record contains a pay stub purportedly issued by [REDACTED] to the applicant for employment during the pay period ending December 15, 1973. This office notes that the applicant did not claim, on the Form I-687, to have worked for [REDACTED] and the pay stub does not contain an address for that alleged employer. Because the employment is unverifiable and conflicts with the employment history provided by the applicant, the pay stub will be accorded no evidentiary weight.
- The record contains a photocopy of a savings account deposit book held by the applicant and [REDACTED]. The address on that deposit book is [REDACTED] in Laguna Beach, California. That deposit book shows various deposits and withdrawals during 1982 and 1983. This office notes that the deposits and withdrawals were not necessarily made by the applicant and, even if they were, would not have required his presence in the United States.
- The record contains a photocopy of a savings account deposit book held by the applicant, Dr. [REDACTED]. Although that account book was issued on September 9, 1987, it purports to show deposits during 1982 and 1983. The record contains no explanation of that apparent discrepancy. In any event, as was noted above, that deposits were made to this mutually held account on various dates does not demonstrate that the applicant was then in the United States.

- The record contains two receipts purporting to show that the applicant made payments to a dentist on January 9, 1981 and January 16, 1981. Those receipts will be accorded moderate evidentiary weight.
- The record contains California driver's licenses issued to the applicant on October 26, 1976 and March 31, 1981. Those licenses strongly support the inference that the applicant was in the United States on those dates and will be accorded great evidentiary weight. The former shows that the applicant's home address was then [REDACTED] California, an address that does not appear in any of the conflicting residential histories provided by the applicant.
- In an undated letter the applicant stated that he is missing documentation from 1970 through 1980 due to a flood in his home town in Zacatecas, Mexico on July 15, 1991. This office notes that the evidence in the record is sufficient to show that the applicant first entered the United States prior to January 1, 1981, and that evidence that pertains to 1970 to 1980 is not relevant to any other material issue in this matter.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.⁶

In the Notice of Decision, dated December 4, 2006, the director stated that at his September 20, 1994 legalization interview the applicant stated that he was absent from the United States from January 1984 to September 1985, and that he was therefore ineligible pursuant to section 245A(a)(2) of the Immigration and Nationality Act and 8 C.F.R. § 245a.2(h)(1).

On appeal, counsel argued that the applicant had never stated that he was absent for the period alleged by the director and pointed out that various evidence in the record supports that he was in the United States during the period when he is alleged to have been absent.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The interviewing officer's notes from the applicant's September 4, 1994 interview read as follows:

Applicant stated he left in Jan 1984 and Sept 1985 And his second exit was in November 1987 + returning in December 1987.

[Errors and abbreviations in the original.]

⁶ The record also contains some affidavits pertinent to the applicant's wife's presence in the United States at various times. Those affidavits are not relevant to any material issue in this matter.

The notes are inconsistent, in that if the applicant was absent during some portion of January 1984 and some portion of September 1985, then his absence from November 1987 to December 1987 was not his second absence, but at least his third. However, to conclude from that discrepancy that “[the applicant] left in Jan 1984 and Sept 1985” means that the applicant was absent from January 1984 **through** September 1985 is a considerable logical leap. This office finds that this interpretation was unjustified. That finding does not, however, establish the applicant’s eligibility.

The evidence pertinent to the applicant’s claim of continuous residence includes affidavits and declarations from friends, neighbors, acquaintances, and former coworkers and employers; U.S. government documents from the IRS and the SSA; receipts for money orders, dental bills, and registered mail; income tax returns and W-2 forms; and photocopies of California driver’s licenses issued to the applicant.

For the various reasons listed above, none of the affidavits and declarations have been accorded any evidentiary weight. Although some of those affidavits and declarations would have been accorded some weight standing alone, their credibility was destroyed by the conflicts between the applicant’s various assertions, the conflicts between various items of evidence and those assertions, and the conflicts between the various items of evidence and each other.

Notwithstanding the myriad and manifold contradictions between and among the applicant’s assertions and the evidence, however, the contemporaneous evidence and the evidence produced by and for various governmental agencies retain some evidentiary weight. The evidence from the SSA and IRS, the receipts for money orders, registered mail, and payments toward dental bills, the income tax returns and W-2 forms, and the photocopies of driver’s licenses all indicate that the applicant entered the United States prior to January 1, 1982 and has been in the United States at various times during the period of requisite residence.

The evidence does not, however, demonstrate continuous residence. To the contrary, the applicant listed a home address in Mexico on some of the money orders, which indicates that he likely still lived there at least part-time. The applicant’s inability to select and document a single U.S. residential history demonstrates that he has provided inaccurate information, which suggests that he is covering up lengthy absences from the United States. That the applicant has been unable to give a single coherent list of his absences from the United States during the period of requisite residence also suggests that he has been absent more often and for longer periods than he is admitting. That the applicant has been unable to provide an accurate employment history is similarly suspicious. The annual earnings shown on various documents produced for and by the U.S. government suggest that he has never continuously resided in the United States.

Further still, although the dates on the various receipts submitted suggest that the applicant was in the United States for long portions of the period of requisite residence, the applicant submitted no receipts pertinent to the long periods noted above.⁷ The lack of any receipts for long periods also suggests that the applicant was absent for long periods.

⁷ See page nine, above.



The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.