

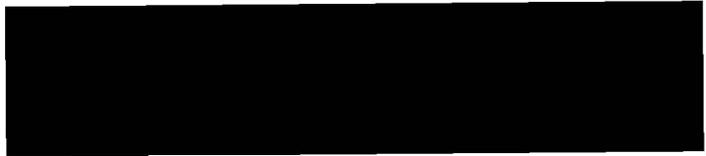
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FILE:



MSC 05 141 11607

Office: LOS ANGELES

Date: SEP 24 2008

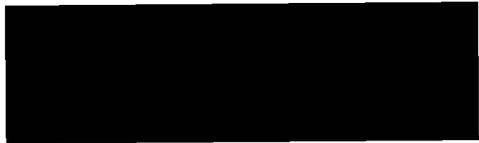
IN RE: Applicant:



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.

On appeal, counsel submitted additional evidence and asserted that the evidence in the record demonstrates the applicant's eligibility. More specifically, counsel argued that the district director had failed to accord adequate weight to the acquaintance affidavits submitted.

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).

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, 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.

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 January 6, 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 (1) during May 1980 he lived at [REDACTED], (2) from May 1980 to June 1983 he lived at [REDACTED] Reseda, California, (3) from June 1983 to July 1985 he lived at [REDACTED] in Van Nuys, California, and (4) from August 1985 to November 1989 he lived at [REDACTED].

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 (1) from May 1980 to October 1984 as a self-employed handyman, (2) from October 1984 to September 1985 in construction for "Construstuction Mc Cormich," and (3) from October 1985 to 1990 as a kitchen preparer at [REDACTED] at [REDACTED] in Reseda, California. The applicant did not otherwise identify the construction company he worked for from 1984 to 1985 and did not provide its address or telephone number in the space provided for that purpose.

The pertinent evidence in the record is described below

- The record contains color photocopies of four photographs and black and white photocopies of two others. One color photograph is labeled to indicate that it shows the applicant in Inglewood, California. A label indicates that another is of the applicant and his wife at a birthday party during 1985. A third purports to show the applicant outside Universal Studios in Hollywood, California during 1986. The fourth purports to show the applicant in Benjie's Restaurant in 1987. The two black and white photographs are labeled to indicate that they show the applicant working in Reseda, California during 1988.

No way exists to determine that the first three color photographs and the two black and white photos were actually taken in the United States. No way exists to determine whether the first three color photographs and the two black and white photographs were taken during 1986. The photograph that purports to be taken in Benjie's Restaurant during 1987, however, has a weekend football schedule prominently posted. That schedule announces,

Saturday Cowboys Giants
Sunday Raiders vs Saints
Monday Eagles vs Saints.

This office notes that the weekend football schedule shown, which the applicant represents to have been posted at his workplace during 1987, does not correspond to the 1987 game schedule of the National Football League. Rather, it corresponds to the 1989 NFL schedule, during which the Dallas Cowboys played the New York Giants on Saturday, December 16, the Los Angeles Raiders played the Seattle Seahawks on Sunday, December 17, and the Philadelphia Eagles played the New Orleans Saints on Monday, December 18. (This information was taken from the National Football League's official website at <http://www.nfl.com>, accessed September 11, 2008.) This office further notes that the photograph includes a person dressed as Santa Claus, which is more consistent with December than any other month. This office finds that the photograph that the applicant represented as showing that he was in the United States during 1987 was actually taken during 1989, and probably during December.

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. Further, 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). That the applicant misrepresented that the 1989 photograph was taken during 1987 does not only reflect on that particular item of evidence, but also impeaches all of the applicant's evidence and all of his assertions.

The record contains a form affidavit, dated April 17, 2003, from [REDACTED] of Van Nuys, California. The affiant stated that he personally knows that the applicant lived in Van

Nuys, California from January 2, 1981 through the date of that affidavit because the applicant's father was working as a gardener for the affiant and the affiant then met the applicant. How this facilitated the affiant remembering the exact date is not further explained. This office notes that, contrary to the affiant's assertion, the applicant claimed, in the residential history he provided on the Form I-687, to have lived in Reseda, California from May 1980 to June 1983.

- The record contains an affidavit, dated November 17, 2006, also from [REDACTED] which provides a Lake Balboa, California address for him. The affiant again stated that he has known the applicant since January 1981 and is able to determine the date because the applicant's father worked for the affiant as a gardener, but again did not state how that facilitated remembering the date.
- The record contains an affidavit, dated December 27, 2004, from [REDACTED] of Van Nuys, California, who states that she is the applicant's wife. The affiant further stated that she met the applicant in the United States in approximately June of 1983, they had children together during 1990 and 1991, and were married in 2000.
- The record contains an affidavit, dated December 21, 2004, subscribed by both [REDACTED] [REDACTED] also of Ontario, California.

[REDACTED] stated that she and the applicant are cousins and both lived in Tepeaca, Puebla, Mexico until 1980, when the applicant moved to Los Angeles, California. She further stated that they were reunited in 1986 in Van Nuys. This office notes that the applicant did not claim ever to have lived in Los Angeles. [REDACTED] stated that he met the applicant in 1986 through his wife.

- The record contains an affidavit, dated April 22, 2003, from [REDACTED] of Van [REDACTED] stated that he has known the applicant since approximately November 1983 and is able to determine when they met because when the affiant, Mr. [REDACTED] arrived in the United States both he and the applicant worked in construction. He added that they have been friends ever since. The affiant did not state whether they worked for the same company or identify the company that employed the applicant.
- The record contains an affidavit, dated November 27, 2006, from [REDACTED] who stated that he has known the applicant since they lived in Mexico, but first encountered him in the United States in approximately January 1981. The affiant states that he has known the applicant since then but does not state that they were in constant contact, admitting that, until recently, he had not seen him in over two years.
- The record contains an affidavit, dated November 17, 2006, from [REDACTED] who states that he has been acquainted with the applicant in the United States since approximately January 1981, when he began to hire the applicant to do repairs to his home. He also stated

that the applicant became a customer in his bookstore during 1987, but does not state how frequently they were in contact during the period of requisite residence.

- The record contains a form declaration, dated October 2, 1999, from [REDACTED] of Pacoima, California. [REDACTED] stated that the applicant was a laborer for Ray Mart Tree Service, in Pacoima, California, eight hours per week, from 1981 to 1984.
- The record contains another affidavit, dated April 21, 2003, also from [REDACTED] of Pacoima, California. [REDACTED] states that he is a self-employed contractor in the tree trimming business and that the applicant worked for him from 1981 to 1984 for no more than eight hours per week.

This office notes that the applicant did not list employment with a tree service in his ostensibly exhaustive list of his employment in the United States since January 1, 1982. The declaration and the affidavit from [REDACTED] conflict with the ostensibly exhaustive employment history the applicant provided.

- The record contains a notarized form employment verification letter. The signature on that form is not perfectly legible, but appears to be "[REDACTED]," who gave his title as "manager." [REDACTED]'s address and telephone number are not provided on that form, rendering the information less verifiable. The letter states that the applicant worked for [REDACTED], [REDACTED]'s Deli, in Reseda, California, in "Kitchen Prep" from 1985 to "Present." Although the affiant appears to have dated his signature April 6, 1990, the notary's attestation at the bottom of that letter indicates that it was signed before the notary on April 12, 2002. That irregularity is sufficient to subject this employment verification letter to additional scrutiny.
- The record contains a copy of that same form employment verification letter. That copy bears the signature of [REDACTED], but not the notary's attestation, which indicates that it was copied sometime after [REDACTED] signed it, but before it was notarized, notwithstanding that the notary attested that it was signed before him. [REDACTED] added his signature, the word "president," his printed name, and telephone number, but not his address, to that affidavit and provided an acknowledgement of that signature, executed by a notary. That acknowledgement contains an optional section that may be completed, describing the document. Because that section was not completed, whether the acknowledgement actually pertains to [REDACTED]'s signature on that letter is unclear.

The various irregularities pertinent to the affidavits of [REDACTED] and [REDACTED] destroy its credibility. That affidavit will be accorded no evidentiary weight.

- The record contains another declaration, dated May 13, 2003, from [REDACTED], whose address is still not stated. [REDACTED] stated that the applicant worked for Benji's Deli, of which [REDACTED] was president, from 1985 to 1990, but that no records of that employment are available as the restaurant is no longer in operation. [REDACTED] stated that he does not remember the applicant ever being absent during that time.

Neither of the documents from [REDACTED] states the applicant's address during the alleged employment, the exact period of employment, periods of layoff, whether the information is from company records, whether the records are available for inspection or where, or why those records might be unavailable.

The employment verification letter that was signed, at various times, by both [REDACTED] does not state the applicant's address during that employment and does not state when the applicant began working for Benjie's Deli, other than 1985. They do not indicate whether there were any periods of layoff or state the applicant's duties in any detail. They do not state whether the information was taken from company records, where those records are, and that they are available, or, in the alternative, why they are not available.

The May 13, 2003 declaration from [REDACTED] does not state the applicant's address at the time of his employment, the exact period of employment, or periods of layoff.

None of the employment verification letters provided conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i), which are stated above. They will still be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), but the documents from [REDACTED] and the May 13, 2003 declaration of [REDACTED] will be accorded less weight than they would have if they conformed to the governing regulation. The evidentiary weight of the document that was signed at different times by [REDACTED] and [REDACTED] cannot be further reduced.

- The record contains a Fictitious Business Name Statement filed by [REDACTED] and [REDACTED], on March 19, 1986, showing that the business at [REDACTED] was permitted to operate under the name "[REDACTED] Station." This office notes that the applicant included the name [REDACTED] in his description of the business that employed him from 1985 to 1990, but also notes the different addresses. The relevance of that document to the instant application is unclear.
- The record contains a form affidavit from [REDACTED] who stated that he lives at [REDACTED] but does not identify the city. He further stated that he met the applicant during May 1980 and has first-hand knowledge of his continuous residence in the United States since then because, "He's a brother of my best friend and that's for I meet him and know that he traveled to Mexico and return at a month." [Errors in the original.] Although the affiant dated his signature April 7, 1990, the notary's attestation states that the affidavit was subscribed and sworn before him on April 12, 1990.
- The record contains an undated form declaration from [REDACTED] of Panorama City, California. [REDACTED] stated that he and the applicant lived together at [REDACTED], from June 1980 to June 1983. Although the form on which the declaration was made was designed to be used as an affidavit, it was not attested to by a notary and will not be accorded the additional evidentiary weight accorded to affidavits and other sworn statements.

Further, this office notes that, on the Form I-687 application, the applicant stated that he lived at [REDACTED] only during May of 1980, and that subsequently, and until June 1983, he lived at [REDACTED] in Reseda, California. The information in [REDACTED] affidavit conflicts with the information the applicant provided.

- The record contains two Mexican airmail envelopes that purport to have been mailed to the applicant at [REDACTED]. In a declaration dated February 27, 2003 the applicant stated those envelopes are from 1983 and show that the applicant was then living at that address in the United States. This office observes that those photocopies include no legible postmarks. They are therefore not evidence of the applicant's presence in the United States during the period of requisite residence.
- The record contains a copy of the applicant's Social Security Statement, issued November 5, 2002. That statement shows that the applicant reported income during each year from 1991 to 2001, but reported no income during any previous year.

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

In a Notice of Intent to Deny (NOID), dated February 7, 2006, the director stated that the applicant failed to submit evidence sufficient to demonstrate his continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the two black and white photographs described above and copies of other evidence that he had previously submitted. The applicant also submitted his own statement, dated February 16, 2006, in which he asserted that the evidence submitted is sufficient to show that he resided in the United States during the requisite period. In the Notice of Decision, dated October 31, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel submitted the November 27, 2006 affidavit of [REDACTED] the November 17, 2006 affidavit of [REDACTED] the November 17, 2006 affidavit of [REDACTED] all of which are described above. She also provided a brief and a statement, dated December 21, 2006, from the applicant. In his statement the applicant reiterated his claim of having resided in the United States during the requisite period.

In the brief, counsel urged that the applicant's evidence, in particular the affidavits and declarations, are sufficiently probative of his continuous residence in the United States and that the applicant should be approved.

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 reliability of the applicant's evidence, and the evidentiary weight to be accorded to it, are critical to determining whether it sustains the applicant's burden of proof.

As was noted above, the applicant submitted six photocopied photographs. Only one of the six photographs submitted is readily dated, and that one was clearly taken no earlier than 1989, after the end of the period of requisite residence. As was also noted above, the applicant's submission of that photograph, together with the misrepresentation that it was taken in 1987, damages the credibility of all of the applicant's assertions and decreases the evidentiary value of all his evidence.

Similarly, the notary's attestation on the employment verification letter from [REDACTED] indicated that [REDACTED] signature was placed on that employment verification letter contemporaneously with [REDACTED] signature. Subsequently, the applicant submitted a copy of that employment verification letter that contained [REDACTED] signature, but not the attestation. This indicates that the document was not signed before the notary, as the notary attested. This calls into question the legitimacy of the attestations on the applicant's other affidavits, and the credibility of the affidavits themselves, and of the balance of the applicant's evidence. This impeached, the applicant's evidence can be accorded only minimal evidentiary weight.

Further, although some of the applicant's affiants and declarants stated that the applicant was in the United States continuously, none except the applicant's wife stated how often they were in contact with the applicant during any portion of the period of requisite residence. Even the employment verification letters are unclear on that point.

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. 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.