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U.S. Citizenship
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FILE:



MSC-06-096-16989

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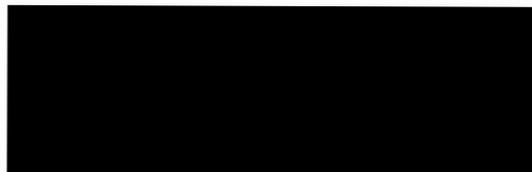
IN RE:

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.

A handwritten signature in black ink, appearing to be "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 determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director stated that though the applicant testified under oath on October 23, 2006 that he first entered the United States through San Ysidro, California on October 15, 1981, this was not consistent with other evidence in the record. Specifically, the director noted that the Forms EOIR-42B and G-325A Biographic Information submitted on April 6, 1999 indicated that the applicant resided continuously in Mexico from his date of birth until December 1982. The director also noted that the applicant testified that these dates were correct while he was under oath during removal proceedings on August 3, 2000. This inconsistency caused the applicant to fail to satisfy his burden of proving that he entered the United States before January 1, 1982 and then continuously resided in the United States for the duration of the requisite period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel for the applicant submits a brief. Counsel states that difficulties with English and ineffective assistance of a paralegal when he completed his Forms EOIR-42B and G-325A caused the inconsistencies noted by the director. The applicant further submits additional evidence in support of his application.

An applicant for Temporary Resident Status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988.

CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 4, 2006. The applicant did not complete part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry. Similarly, he did not complete part #32 where he was asked to list all of his absences from the United States. At part #33 where the applicant was asked to list all of his employment since he first entered the United States, he stated that he was employed by the Dorchester Homeowners Association in Los Angeles as a supervisor. He stated that this employment began on May 27, 1992 and that he was still working for this association.

The record also contains a second Form I-687 signed by the applicant on July 28, 1990. At part #33 of this Form I-687 where the applicant was asked to list all of his addresses since he first entered, he stated that during the requisite period he resided at [REDACTED] California from October 1981 until November 1983 and then at [REDACTED] in apartments 27, 37 and 39 from November 1983 until June 1990. At part #35 where the applicant was asked to list all of his absences from the United States, he stated that he was absent from September 3 to September 27 in 1987 when he went to Mexico to visit his sick grandmother. At part #36 where the applicant was asked to list all of his employment since he first entered the United States, he stated that during the requisite period, he was employed by: Star Laboratories, Inc. in Gardena, California from April 1985 until May 1986; [REDACTED] in Los Angeles as a salesperson from May 1986 until November 1987; and at Food Dimensions, Inc. in Los Angeles as a janitor from November 1987 until October 1989.

Also in the record is a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents submitted by the applicant on April 6, 1999. At part #16 of this form, the applicant indicated his first residence in the United States was in Santa Rosa California from December 1982 until November 1983. At part #25 of this application, the applicant indicated that he had previously been absent from the United States once, when he went to Mexico to visit his ill grandmother and to get married in September 1987.

With the Form EOIR-42B, the applicant submitted a Form G-325A Biographic Information. The applicant signed and submitted this form on March 30, 1999 when he was in removal proceedings. The form indicates that the applicant resided in Mexico from July 1968 until December 1982.

Further in the record is a written transcript of the applicant's removal proceedings. The record reveals that during these proceedings, on August 3, 2000, the applicant stated that he first entered the United States in 1982. The applicant stated that in 1987 when he was in Mexico because his grandmother was ill, he also got married. He stated that in approximately June or July of 1988 he entered Mexico when he attempted to help his new wife to enter the United States and was turned away at the United States border.

That the applicant has submitted documents in which he stated that he first entered the United States in December 1982 and also testified before an immigration judge that he first entered the United States in 1982 casts doubt on his current claim that he first entered the United States in October 1981.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence that is relevant to his residence in the United States during the requisite period:

- 1) Original envelopes and letters mailed to and from the applicant that indicate that the applicant's residence was in Los Angeles. The postmark dates on these envelopes indicate that they were mailed from June 1985 until April 1988.
- 2) A declaration from [REDACTED], who states that he knows that the applicant entered the United States on October 15, 1981 with his uncle [REDACTED]. He states that he is aware that the applicant resided in the United States continuously since that time and through May 1988 with

the exception of his absence from the United States when he left to get married from March to April in 1988.

- 3) Affidavits from [REDACTED] in which the affiants state that they know that the applicant has resided in the United States since 1981 and through May 1988. However, the affiants do not state when or where they first met the applicant or whether they first met him in the United States. They fail to state the frequency with which they saw the applicant in the United States during the requisite period or whether there were periods of time during that period when they did not see the applicant.
- 4) An affidavit from [REDACTED] who states that he first met the applicant at Star Laboratories on January 19, 1984 while they were both working. However, the affiant does not state the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during the requisite period when he did not see the applicant.
- 5) An affidavit from [REDACTED] who states that he was a good friend of the applicant's uncle, [REDACTED] who is now deceased. He states that he is aware that the applicant first entered the United States on October 15, 1981 with his uncle [REDACTED]. He states that the applicant resided there for two weeks and then began to reside with another uncle, [REDACTED] in Santa Rosa, California until November 20, 1983. He goes on to state that the applicant then moved to Los Angeles to live with his aunt, [REDACTED] who is now deceased. The affiant states that the applicant resided continuously in the United States since he entered and until May 1988 with the exception of one absence that occurred from March to April in 1988 when he left to get married. It is noted that the applicant indicated on his EOIR-42B that he was married in Mexico on September 1987 and that this 1987 absence was the only time the applicant left the United States during the requisite period.
- 6) An affidavit from [REDACTED] who states that the applicant first entered the United States on October 15, 1981 and began to reside with his uncle, [REDACTED] who is now deceased. She states that he resided with him for two weeks, after which time his uncle [REDACTED] brought the applicant to Santa Rosa, California. She asserts that he resided there until November 1983, at which time the applicant moved back to Los Angeles to reside with his aunt, [REDACTED]. She states that she knows that the applicant has resided continuously in the United States with the exception of an absence from March to April 1988 when he went to Mexico to get married. It is noted that the applicant indicated on his EOIR-42B that he was married in Mexico on September 1987 and that this 1987 absence was the only time the applicant left the United States during the requisite period.
- 7) An affidavit from [REDACTED], who states that the applicant first entered the United States on October 15, 1981 and began to reside with his uncle, [REDACTED] who is now deceased. She states that he resided with him for two weeks, after which time his uncle [REDACTED] brought the applicant to Santa Rosa, California. She asserts that he resided there until November 1983, at which time the applicant moved back to Los Angeles to reside with his aunt,

██████████ She states that she knows that the applicant has resided continuously in the United States with the exception of an absence from March to April 1988 when he went to Mexico to get married. It is noted that the applicant indicated on his EOIR-42B that he was married in Mexico on September 1987 and that this 1987 absence was the only time the applicant left the United States during the requisite period.

- 8) An affidavit from ██████████ who states that he first met the applicant in November 1981 in Los Angeles when he visited the applicant's uncle, ██████████ and his aunt, ██████████ both of whom are now deceased. She states that she knows that the applicant entered the United States on October 15, 1981 with his uncle, ██████████ He states that she knows that the applicant has resided continuously in the United States with the exception of an absence from March to April 1988 when he went to Mexico to get married. It is noted that the applicant indicated on his EOIR-42B that he was married in Mexico on September 1987 and that this 1987 absence was the only time the applicant left the United States during the requisite period.
- 9) An affidavit from ██████████ who states that she first met the applicant in November 1981 in Los Angeles when she and her husband visited the applicant's uncle, ██████████ who is now deceased and his aunt ██████████, who is also deceased. She states that she knows that the applicant entered the United States on October 15, 1981 with his uncle, ██████████ She states that she knows that the applicant has resided continuously in the United States with the exception of an absence from March to April 1988 when he went to Mexico to get married. It is noted that the applicant indicated on his EOIR-42B that he was married in Mexico on September 1987 and that this 1987 absence was the only time the applicant left the United States during the requisite period.
- 10) A print-out of wages received by the applicant in June, September and December of 1987 and in March of 1988. This print-out indicates that the applicant was employed by Food Dimensions, MD's Clothing and BJD's Fashions in 1987 and 1988.
- 11) An affidavit from ██████████, who states that the applicant resided in Santa Rosa, California from October 15, 1981 until November 20, 1983 and then in Los Angeles, California from November 21, 1983 until the date she submitted his affidavit. The affiant states that she and the applicant are relatives.
- 12) An affidavit from ██████████ who states that the applicant resided in Santa Rosa, California from October 15, 1981 until November 20, 1983 and then in Los Angeles, California from November 21, 1983 until the date he submitted his affidavit. The affiant states that he and the applicant are cousins and that the longest period of time which he has not seen the applicant for is two or three days.
- 13) An affidavit from ██████████, who state that they are the aunt and uncle of the applicant. The affiants state that the applicant helped them by performing odd jobs to earn spending money. They state that because they reside in El Monte, the applicant spent time with

them when he did so. They state that their children, who are his cousins, helped the applicant to learn English.

- 14) A declaration from [REDACTED] who states that he has known the applicant since November 1983. Though he speaks of the applicant's moral character, he does not indicate that he knows that the applicant resided in the United States for part or all of the requisite period. Therefore, this declaration carries no weight as evidence that he did so.
- 15) A declaration from the applicant he signed on August 7, 1990. The applicant states that he entered the United States on October 15, 1981 and that he has resided continuously in the United States since that time. He further states that he was absent from the United States from September 3 to September 27, 1987.
- 16) An affidavit from [REDACTED] who states that he knows that the applicant was absent from the United States from September 3 to September 27 in 1987 when he went to visit his ill grandmother.
- 17) Declarations and affidavits from [REDACTED] as follows:
 - a) An affidavit from [REDACTED] that was notarized on August 31, 1990. The affiant states that the applicant resided with them in Santa Rosa, California from October 15, 1981 until November 20, 1983. The affiants state that the applicant was 13 years old when he began to reside with them and that he did not go to school because he could not speak English. They state that the applicant performed odd jobs for them to earn spending money and that he moved to Los Angeles in 1983 to attend an adult high school.
 - b) A declaration from J [REDACTED] that is dated July 28, 1990. The declarant states that the applicant resided with him from October 15, 1981 until November 20, 1983. He asserts that while the applicant, who is his nephew, resided with him he did light work around the house until he decided to move to Los Angeles and go to school.
 - c) An undated declaration from [REDACTED] in which the declarant states that he knows that the applicant, who is his nephew, resided in Santa Rosa, California from October 15, 1981 to November 20, 1983 and then in Los Angeles beginning in November 21, 1983.
 - d) An undated declaration from [REDACTED] The declarant states that from October 15, 1981 until November 20, 1983 the applicant, who is his nephew, resided with him in Santa Rosa California. He states that after the applicant ended his residence in Santa Rosa, he moved to Los Angeles.
- 18) A declaration from [REDACTED] that is dated July 11, 1990. The declarant states that the applicant was employed from April 1985 until May 1986 in the packing department and that the

affiant was working in shipping and receiving for Star laboratories in Gardena, California. She states that this company went out of business in February 1990.

- 19) Declarations and affidavits from _____ as follows:
- a) An affidavit that was notarized on September 14, 1990. The affiant states that she is the applicant's aunt and that the applicant resided with her at her residence from November 1983 until March 1988. She goes on to say that the applicant studied English at that time and that he helped her by doing chores and also helped the manager of the building by doing odd jobs.
 - b) An affidavit that was notarized on July 28, 1990. The affiant states that she knows that the applicant resided in Santa Rosa from October 15, 1981 to November 30, 1983 and then in Los Angeles from November 21, 1983 until the date she signed the affidavit. She asserts that the applicant is her nephew and states that the longest period of time during her residence in the United States that she did not see the applicant for is one day. It is noted that noted from an interview with the applicant on May 9, 1994 indicate that the applicant states that this affiant was with him when he was absent from the United States in September 1987.
 - c) A declaration from _____ that is not dated. The declarant states that from November 21, 1983 until March 9, 1988, the applicant, who is her nephew, resided in her home in Los Angeles. She states that after that time, the applicant began to reside with his uncle, _____ also in Los Angeles.
- 20) A declaration from _____ who states that he personally knows that the applicant, who he indicates is his cousin, resided in the United States in Santa Rosa from October 15, 1981 until November 20, 1983 and then in Los Angeles from November 21, 1983 until the date he signed the declaration. However, the declaration is not dated.
- 21) Photocopies of Identification cards issued by schools that were issued to the applicant in 1986 and 1987.
- 22) A photocopy of a Video 101 card. Because this card is not dated, it is not clearly associated with the requisite period.
- 23) A photocopy of a page of the applicant's 1987 and 1988 Forms 1040A and his corresponding Form W-2s issued to him by Food Dimensions, Inc. The applicant also submitted a second photocopy of a different Form 1040A for 1987 and a second Form W-2 for 1987 issued by Star Laboratories, Inc.

It is noted that the applicant has also submitted evidence of his residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has

submitted sufficient evidence to meet his burden of proving that he resided continuously in the United States in an unlawful manner for the duration of the requisite period. Evidence that does not pertain to the requisite period is, therefore, not relevant to this proceeding and is not discussed here.

The director denied the application for temporary residence on December 8, 2006. In denying the application, the director noted that the applicant's Forms EOIR-42B and his Form G-325A both stated that the applicant resided in Mexico until December 1982. The director also noted that the applicant confirmed this on August 3, 2000 when he testified under oath before an immigration judge. Therefore, the director determined that the applicant failed to establish that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a brief through counsel and submits additional evidence in support of his application.

In his brief, counsel asserts that language difficulties caused the applicant to provide inaccurate testimony regarding dates. He also states that the person who helped the applicant complete his forms EOIR-42B and G-325A was a paralegal who asked that he complete blank forms.

The applicant further submits a photocopy of an immunization record bearing his name and date of birth. This record indicates that its bearer received immunizations in Mexico in 1968 and 1973. The first immunization indicated in the United States was in December 3, 1981 from the "SR Comuniry Clinic." The record also indicates that the applicant received an additional immunization on June 3, 1982 from this same clinic. Though it is possible that an individual working for a community clinic would misspell the word community, this misspelling casts doubt on the authenticity of this document.

The applicant has also submitted a photocopy of his marriage certificate, written in Spanish. This document indicates that the applicant's marriage to his former wife was registered on March 14, 1988 and took place in Michoacán, Mexico.

The AAO has reviewed the documents submitted by the applicant in support of his claim that he first entered the United States before January 1, 1982 and then resided continuously since that time and until the end of the requisite period. After reviewing these documents, it was noted that there were inconsistencies in the record regarding both the applicant's date of first entry into the United States and his absences from the United States during the requisite period.

The applicant has not been consistent regarding his date of first entry into the United States. He has stated in documents associated with his applications for legalization that his first entry into the United States was in October of 1981. However, while in removal proceedings in August of 2000 he consistently stated under oath that his first entry into the United States was in 1982.

Similarly, the applicant has not been consistent regarding his absences from the United States. On his 1990 Form I-687 and in its supporting documents, the applicant has stated that his only

absence from the United States during the requisite period was in September 1987. Similarly, he submitted a declaration signed on August 7, 1990 which states that he resided continuously in the United States except for an absence from September 3 to September 27, 1987. He stated that his only absence was in September 1987 when he submitted his Form EOIR-42 and indicated on that form that he both visited his sick grandmother and got married in September 1987. However, on appeal the applicant has submitted his marriage certificate, which indicates he was married in Mexico in March of 1988. He has also submitted affidavits from [REDACTED]

[REDACTED] that state that his only absence from the United States during the requisite period was from March to April of 1988. These inconsistencies cast doubt on whether the applicant has accurately and completely stated his absences from the United States during the requisite period to CIS.

These inconsistencies cause the applicant to fail to satisfy his burden of proving that he maintained continuous residence in the United States for the duration of the requisite period.

In this case, the absence of consistent testimony and from the applicant and within supporting documents regarding his first entry into the United States and regarding his absences from the United States during the requisite period seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

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