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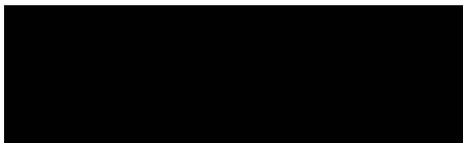
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090

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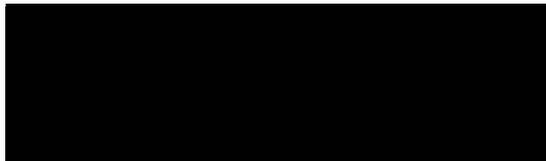
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MSC-06-089-10939

Office: HARTFORD

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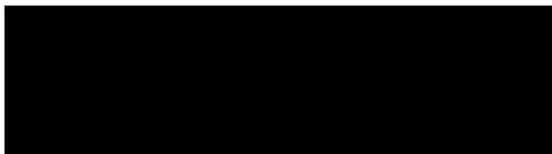
JUN 05 2009

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.

John F. Grissom  
Acting 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, or *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 director of the Hartford office, and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding 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 time period.

In addition, the director determined that the applicant failed to establish that he is eligible for class membership pursuant to the terms of the CSS/Newman settlement agreements since the applicant stated at the time of his interview that he did not know when he applied for legalization but he thinks it was in 1989. By adjudicating the application on the merits, the director treated the applicant as a class member. The AAO will adjudicate the appeal of the denied application.

On appeal, counsel asserts that the applicant has established his unlawful residence for the requisite time period. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters, a copy of a medical exam, and copies of the school records

of the applicant's daughter. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains an affidavit from [REDACTED] who states that she rented her mobile home, located at [REDACTED] in Sealy, Texas, to the applicant, his wife and family from June 1980 until December 1982.

The applicant has also submitted a copy of the affidavit of [REDACTED], who states that the applicant resided at [REDACTED] in Sealy, Texas from November 1981 until June 1982 with the applicant's wife, daughter and son.<sup>2</sup> However, this address is not listed by the applicant as a residence on the instant I-687, and this address is inconsistent with the address provided by Ms. [REDACTED] as the applicant's residence for the same time period.

The record contains a copy of an affidavit from a doctor [REDACTED], who states that the applicant was working for Hurricane Industries in Sealy, Texas from September 17, 1980, when the doctor states he first started treating the applicant, until May 20, 1983. The doctor states that the applicant also used the alias [REDACTED]. The applicant also submitted a copy of a pre-employment examination form for a [REDACTED], dated January 19, 1982, which appears to be signed by [REDACTED]. The date of this pre-employment examination is inconsistent with the date on which the doctor states he first treated the applicant.<sup>3</sup> In addition, the date on this form appears to have been altered, and other information appears to have been partially or completely removed. Therefore this document has minimal probative value.

The applicant submitted a copy of the affidavit of [REDACTED] who states that the applicant rented a premises from him from January 1982 until some time in 1985 at [REDACTED] in Sealy, Texas. The dates of residence stated by [REDACTED] are inconsistent with the dates of residence stated by Mr. [REDACTED] and [REDACTED].

The record contains a copy of an affidavit from [REDACTED], who states he has known the applicant since January 1982. He also states that the applicant worked at Hurricane Industries in Sealy, Texas from January 1982 until May 1985, and for a [REDACTED] on a hayfield from some time in 1985 until 1988, when the applicant moved to Connecticut. The dates of the applicant's employment with Hurricane Industries as stated by [REDACTED] are inconsistent with the dates stated by [REDACTED]. In addition, on the instant Form I-687, the applicant lists his dates of employment with Hurricane

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<sup>2</sup> The Form I-687 of [REDACTED], the applicant's son, lists an address in Houston, Texas for the time period of February 1981 until October 1987, and an address in Alexandria, Virginia for the remainder of the requisite statutory period.

<sup>3</sup> In addition [REDACTED] height (5'10") is inconsistent with the applicant's height (5'8") as stated on his driver's license. The form also states a different date of birth for [REDACTED], and lists him as having seven children.

Industries as being from 1981 until 1985, and states he then worked in California from 1985 through the remainder of the requisite statutory period.<sup>4</sup>

The applicant submitted two letters from [REDACTED] dated September 16, 1992 and August 30, 1990, respectively. [REDACTED] states that she met the applicant and his family in 1981 when the affiant was living in Sealy, Texas, and that the applicant and his family have lived in the United States since 1981.

The record contains a copy of an affidavit from [REDACTED] who states that the applicant lived at [REDACTED] in Sealy, Texas from 1979 until 1985. She states that she met the applicant and his wife when they would come into her bar and restaurant, and that the applicant would help her husband in the hay field. [REDACTED] statement of the applicant's dates of residence at [REDACTED] is inconsistent with the statements of [REDACTED] the landlord of that premises, and the applicant.

The record contains an affidavit from [REDACTED] who states that she first met the applicant and his family in October or November, 1980, and that they lived with her in her trailer home at [REDACTED] in Sealy, Texas for five or six months. The applicant does not list this address as a residence address on the instant I-687 application. [REDACTED] also states that the applicant moved to California in 1985. However, this is inconsistent with the applicant's statement in the instant I-687 application that he resided in Texas for the duration of the requisite statutory period.

The applicant submitted the affidavit of [REDACTED] who claims to have known the applicant for more than twenty years. He states that in 1987, when he and the applicant were residing in California, he and the applicant, along with the applicant's wife and daughter, traveled to Mexico on or about December 20, 1987. [REDACTED] states that after he returned to California, he again saw the applicant and his family in California some time in the first week of January of 1988. This statement is inconsistent with the applicant's statement in the instant I-687 application that he was residing in Texas in 1987 and 1988. In addition, when the applicant filed the instant application, he listed only one absence from the United States in 1989. At the interview, he corrected the date of his only absence from the United States to being some time in 1984. Therefore, [REDACTED] statement is inconsistent with that of the applicant.

The applicant submitted copies of his daughter's school records from Sealy, Texas, which state her enrollment in sixth grade from August 30, 1982 until her withdrawal on January 20, 1983.<sup>5</sup> Although these records are evidence in support of the applicant's residence in the United States for the time period from August 30, 1982 until January 20, 1983, they do not establish the applicant's continuous residence for the duration of the requisite period.

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<sup>4</sup> In the instant I-687 application, the applicant's statement of his residences during the requisite period is inconsistent with his statement of employment during the same period. The applicant states that he resided in Sealy, Texas for the period of time 1985 through the requisite statutory period. However, the applicant also states that he worked in California for the same period of time.

<sup>5</sup> It is not clear which school the applicant's daughter attended, since the school records contain the names of both Sealy High School and Sealy Junior High School for this period of time.

The record contains employment verification letters from [REDACTED] and [REDACTED].

The record contains one letter and copies of two affidavits from [REDACTED] dated December 7, 1991, September 16, 1992, and December 13, 2004, respectively. In one affidavit [REDACTED] states that the applicant and his family have continued to live in the United States since 1981. In the other affidavit [REDACTED] states that the applicant and his family lived in Sealy, Texas from about 1980 until 1985. The letter states that [REDACTED] was the applicant's supervisor at Hurricane Industries for the period of time from 1978 until 1985 when [REDACTED] states the applicant moved to California. However, on the instant Form I-687, the applicant states that his employment with Hurricane Industries did not begin until 1981, and he does not list any residences in California. In addition, in an affidavit submitted by the applicant in 1993, the applicant stated that he worked for Hurricane Industries from September 17, 1980 to May 20, 1983.

The applicant submitted an original and a copy of an affidavit of [REDACTED], dated September 1, 1992 and November 20, 2000, respectively. In his affidavits, [REDACTED] states that he has known the applicant from 1981 until 1985, when he was the applicant's foreman during his employment with Hurricane Industries in Sealy, Texas. [REDACTED] states that the applicant worked under the alias [REDACTED]. Mr. [REDACTED] statement of the applicant's dates of employment with Hurricane Industries is inconsistent with the 1993 statement of the applicant that he worked for Hurricane Industries from September 17, 1980 to May 20, 1983.

The record contains a copy of an affidavit from [REDACTED] who states that he was the applicant's supervisor at Hurricane Industries in Sealy, Texas from 1982 through 1985. He also states that the applicant worked under the name of [REDACTED]. Mr. [REDACTED] statement of the applicant's dates of employment with Hurricane Industries is inconsistent with the 1993 statement of the applicant.

The applicant submitted copies of two affidavits from [REDACTED]. In one affidavit, Mr. [REDACTED] states that the applicant worked for him in 1982, hauling hay and fixing fence (sic). This document would constitute evidence in support of the applicant's residence in the United States in 1982. However, the applicant's employment with [REDACTED] in 1982 is not corroborated on the instant I-687 application in which the applicant does not list any employment with [REDACTED]. In the other affidavit, [REDACTED] states that the applicant resided at [REDACTED] in Sealy, Texas from June 1979 until November 1985. However, this is inconsistent with the applicant's statement on the instant I-687 application, in which the applicant states that he began residing at this address in 1982.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are

probably true. In addition, the many discrepancies among the witnesses' statements detract from the credibility of the applicant's claim. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). Therefore, they have minimal probative value.

Furthermore, the employment verification letters of [REDACTED] and [REDACTED] fail to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letters do not state how the witnesses were able to date the applicant's employment. It is unclear whether the witnesses referred to their own recollection or any records they or the company may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, these documents have minimal probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant Form I-687, a Form I-485 application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, and applicant's initial Form I-687 application filed in 1990 to establish the applicant's CSS class membership.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding his residences in and absences from the United States during the requisite statutory period.

The record reveals that the applicant's initial I-687 application listed residences and employment in Texas from 1977 to 1985, then a residence and employment in California from 1985 through the remainder of the requisite statutory period. At the time of interview, the applicant stated that he first came to the United States in 1977, was arrested once and turned around in the river crossing from Mexico, but reentered illegally in 1977. Regarding his absences from the United States, in a separate class membership worksheet dated December 6, 1990, and in a statement dated December 18, 1990, the applicant stated that he departed the United States on December 20, 1987 and returned on January 4, 1988. However, in an August 5, 1993 statement, the applicant stated that he left the United States one time only for one month in 1985.

At the time of filing his I-485 application, the applicant listed residences in Texas from 1980 until 1985, then in Connecticut from 1985 for the remainder of the requisite statutory period.<sup>6</sup> Regarding his absences, on his Form I-485, the applicant stated that he last entered the United States illegally in January 1986, at Agua Prieto in Texas.

Finally, at the time of his interview on the instant Form I-687 the applicant stated that he first entered the United States in 1977, and he corrected the date stated on the application for his only absence from the United States to some time in 1984. The instant application lists residences in Texas from 1980 for the duration of the requisite statutory period.<sup>7</sup> However, regarding employment, the instant application lists employment in Texas from 1981 to 1985, and employment in California from 1985 for the remainder of the requisite statutory period.

The applicant's many contradictions are material to his claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The AAO notes that in Sealy, Texas the applicant was arrested two times for public intoxication, on July 24, 1982 and June 23, 1984, respectively. The applicant was also arrested for theft on March 11, 1983. While these arrests are evidence in support of the applicant residing in the United States from July 24, 1982 through June 23, 1984, they do not establish the applicant's continuous residence for the duration of the requisite statutory period. Because the application will be denied on other grounds, the AAO will not request court dispositions for these arrests.

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<sup>6</sup> However, the listing of Connecticut, instead of California, may be a typographical error, since the listed street address is the same as the address in California listed on the applicant's initial I-687 application.

<sup>7</sup> However, the applicant also lists membership in a California church from 1985 for the remainder of the requisite statutory period.

The AAO also notes that on October 6, 1976, the applicant was arrested for illegally entering the United States. It appears that the applicant was permitted to and did voluntarily depart the United States. According to the applicant's own testimony, the applicant subsequently reentered the United States illegally. Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.