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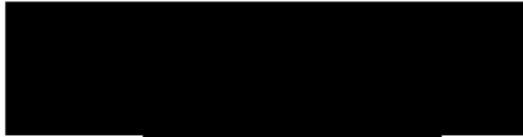
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE:

MSC 05 131 19186

Office: CLEVELAND

Date:

OCT 27 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.

Perry Rhew  
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 Director, Cleveland. 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the evidence submitted by the applicant was insufficient to overcome the grounds set forth for denial in the director's Notice Of Intent To Deny (NOID).

On appeal, counsel submits a brief stating that the applicant has established his eligibility for the immigration benefit sought.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant (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 record contains the following evidence which is material to the applicant’s claim:

- The applicant submitted an affidavit from [REDACTED] wherein the affiant stated that he met the applicant through the applicant’s father in Los Angeles, California in 1980. The affiant stated that the applicant’s father was a coworker at the Benedetti Corporation, and that the applicant was employed at the Benedetti Corporation from 1984 – 1986. The affiant further stated that the applicant resided with his father at [REDACTED] California when he first arrived in this country. The residence address stated by the affiant is in conflict with residence information provided by the applicant. In the Form I-687 submitted by the applicant in 2005, the applicant stated that he first resided in the United States at [REDACTED]. In a Form I-687 signed by the applicant in 1990, the applicant stated that his first residence in the United States was at [REDACTED] and that he lived at that address from January of 1984 to January of 1988.
- [REDACTED] submitted an affidavit wherein she stated that: she has known the applicant since 1983; the two met at a restaurant where she was employed; they have three children together;

they lived together on [REDACTED] from 1984 to 1987; and they later resided at [REDACTED] from 1987 to 1994. The residence information provided by the applicant is in conflict with the residence information provided by the applicant in the two Form I-687s signed by the applicant. In the Form I-687 filed by the applicant in 2005, the applicant stated that he resided at [REDACTED] from 1980 – 1986, and at [REDACTED] from 1986 to 1989. In the Form I-687 signed by the applicant in 1990, the applicant stated that he lived at [REDACTED] from November of 1988 until May of 1990.

- [REDACTED] submitted an affidavit dated September 19, 2007 wherein he stated that the applicant has resided at [REDACTED] since January of 1981.
- [REDACTED], the applicant's father, submitted two affidavits on behalf of the applicant. In an affidavit dated September 13, 2004, the affiant stated that he supported the applicant at [REDACTED] from 1980 – 1984. In an affidavit dated September 18, 1990, the affiant stated that he provided support for the applicant from August 13, 1980 until the year 1983.

[REDACTED] submitted an affidavit on behalf of the applicant wherein he stated that he has personal knowledge that the applicant resided on [REDACTED], Los Angeles, California, from May of 1981 until 1999. This information is in conflict with the residence information provided by the applicant in the 2005 and 1990 Form I-687 signed by the applicant.

- [REDACTED] submitted an affidavit on behalf of the applicant wherein he stated that he has personal knowledge that the applicant resided at [REDACTED] from 1980 – 1985. This information is consistent with the information provided by the applicant on the 2005 Form I-687, but inconsistent with the information provided by the applicant on the 1990 Form I-687. The applicant lists no employment or address in the United States on the 1990 Form I-687 prior to 1984.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of

that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

Further, the inconsistencies noted above with regard to the applicant's residence during the requisite period have not been explained and are material to the applicant's claim as they have a direct bearing on the applicant's activities and whereabouts during the requisite period. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affidavits submitted in support of the applicant's claim lack credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

- The applicant submitted a copy of his son's 1986 California birth certificate.

The applicant submitted a copy of a California identification card issued to him in 1983.

- The applicant submitted 27 hand written rent receipts issued to him and his father for rent paid on unit [REDACTED] in 1981. The name of the person receiving the money is not legible on any of the receipts and they are not, therefore, verifiable.
- The applicant submitted 6 hand written rent receipts issued to him and his father for rent paid on unit [REDACTED] in 1982. The name of the person receiving the money is not legible on any of the receipts and they are not, therefore, verifiable.

The applicant submitted a 1983 W-2 Form issued to [REDACTED]. The social security number on the W-2 Form is [REDACTED]. The applicant's social security number is [REDACTED]. The applicant's address on the W-2 Form is [REDACTED]. This address is not listed by the applicant as his residence address on either of the Form I-687s signed by him.

The applicant submitted pay stubs from the Benedetti Corporation issued to [REDACTED] for labor performed in 1984 and 1985. The social security number on the pay stubs is [REDACTED]. The applicant's social security number is [REDACTED].

The applicant claims to have worked and earned wages under an assumed name [REDACTED] during the requisite period. The applicant does not, however, list that assumed name on the Form I-687. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he is the person who used that name. An applicant's true identity is established pursuant to 8 C.F.R. § 245a.2(d)(1). The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this regulation, documentation must be

submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant. As noted in 8 C.F.R. § 245a.2(d)(2), the most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or a detailed physical description. Other evidence which could be considered are detailed sworn affidavits which identify the affiant by name and address, state the affiant's relationship to the applicant and a detailed description of the basis of the affiant's knowledge of the use of the assumed name by the applicant. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name will carry greater weight. The applicant has not established that he is the same person as the [REDACTED] who was employed by Coelho Farms and the Benedetti Corporation. The referenced evidence is, therefore, of little evidentiary value.

- The applicant submitted 30 hand written rent receipts issued to him and his father for rent paid on unit [REDACTED] in 1984. The name of the person receiving the money is not legible on any of the receipts and they are not, therefore, verifiable.
- The applicant submitted pay stubs from J & J Fashion, Inc. issued to [REDACTED] for labor performed in 1986. The social security number on the pay stubs is [REDACTED]. The applicant's social security number is [REDACTED]
- The applicant submitted pay stubs from L & P Fashions, Inc. issued to [REDACTED] for labor performed in 1987. Some of the pay stubs do not contain a social security number. One pay stub lists a social security number of "[REDACTED]" Others list a social security number of [REDACTED]. The applicant's social security number is [REDACTED]

The applicant submitted pay stubs from L & P Fashions, Inc. issued to [REDACTED] for labor performed in 1988. The social security number listed on the pay stubs is [REDACTED]. The applicant's social security number is [REDACTED]

- The applicant submitted employment letters from the following employers:

[REDACTED] submitted a statement dated May 28, 1987 wherein he states that [REDACTED] was employed by him in 1983 performing agricultural labor and using social security number [REDACTED] (the applicant's social security number is [REDACTED])

[REDACTED] of Manufacturing, submitted a statement on the letterhead of the Benedetti Corporation stating that [REDACTED] was employed by that company from April 9, 1984 until January 9, 1986.

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. The employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not provide: the applicant's address at the time of employment; show periods of layoff (or state that there were none); declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statements are not deemed probative and are of little evidentiary value.

- [REDACTED] Our Lady Queen of Angels Church, Los Angeles, California, submitted a statement stating that the applicant's son, [REDACTED] was baptized on March 14, 1987 as reflected in church records.

The record does contain some evidence of the applicant's presence in the United States during portions of the requisite period. The record does not, however, establish the applicant's continuous residence in the United States for the entire requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the numerous inconsistencies in the record concerning the applicant's activities and whereabouts during the requisite period, seriously detracts 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 applicant's reliance upon documents with minimal probative value, and the inconsistencies noted above, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

The record indicates that the applicant was charged in Los Angeles, California on August 27, 1994 with spouse beating, and in Ohio on July 3, 2000 with liquor consumption in a motor vehicle. The record does not disclose the dispositions of those charges. The record further discloses that the applicant was found guilty of three misdemeanors on June 9, 2003: driving under the influence, speeding and a "marked lanes" violation. [REDACTED]. The applicant was sentenced to 30 days in jail, 24 of which were suspended, and was fined \$685.00 plus court costs. This is an additional basis to deny the instant application and dismiss the appeal. An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B).

Therefore, based upon the foregoing, the applicant 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.