

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

L1

[REDACTED]

Date: **OCT 22 2012**

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the I-687 application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements because he 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. A review of the decision reveals that the director erroneously concluded that the applicant was not eligible for temporary resident status under the CSS/Newman Settlement Agreements because the applicant failed to maintain residency "since prior to 1/1/82 through 5/4/88". The AAO notes that an applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency "since prior to 1/1/82 through 5/4/88;" that portion of the decision regarding residence will be withdrawn. An applicant for temporary residence need only 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 applicant attempted to file a Form I-687 application or was caused not to timely file.

On appeal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant has submitted eleven additional witness statements on appeal.¹ The AAO has 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.²

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.

¹ The remaining documents which the applicant submits on appeal have previously been submitted into the record.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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 has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. 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 witness statements and additional documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements 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 witness statements from the following witnesses:

and
The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide 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 example, state that they first met the applicant in the United States in 1980 or 1981 at a park where they used to play baseball and states that the applicant was his neighbor. states that she met the applicant through her states that he first met the applicant in the United States in 1977 at a park where they used to play baseball. states that she first met the applicant in the United States in 1975 or 1977, and that the applicant was her neighbor. and state that they first met the applicant in the United State in 1980 at a restaurant where the witnesses used to work. states that he first met the applicant in the United States in 1977 at a park where they used to play soccer. states he first met the applicant in 1975 through mutual friends. states that he first met the applicant in the United States in 1981 in a park where they used to play. states his knowledge that the applicant worked in California in 1984. states that the applicant left the United States in July 1987 for one month. states that the applicant has lived in Santa Ana since May 1972. states that the applicant has lived in Santa Ana since January 1971.

To be considered probative and credible, 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 period. Their content must include sufficient detail from a claimed relationship to indicate that it

probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. In this instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. In addition, [REDACTED]

[REDACTED] do not state where the applicant was residing during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] states that from January 1982 and through the end of the requisite period the applicant resided with him on [REDACTED] in Santa Ana, California. However, the applicant failed to list a residence on [REDACTED] in the instant I-687 application, and in the initial I-687 application signed by the applicant on May 30, 1990. [REDACTED] states that the applicant resided with him on [REDACTED] in Santa Ana, California from January to December 1984 and from March to October 1986. However, in the instant I-687 application, the applicant stated that he resided on [REDACTED] from 1973 to 1980.³ Further, although [REDACTED]

[REDACTED] state they do not know when the applicant first arrived in the United States, they provide the address where they were residing "when the applicant arrived in the United States." Due to these inconsistencies, these statements will be given minimal probative value.

The applicant has submitted two employment verification letters from [REDACTED]. In a November 30, 1989 letter, the witness stated the applicant worked as a cook for [REDACTED] in Huntington Beach, California from March 11, 1985 to March 19, 1986 and from May 29, 1987 to November 1, 1987. In a May 25, 1990 letter, the witness stated that the applicant worked for The [REDACTED] for the above-stated periods and for the additional period from November 22, 1981 to November 8, 1983, but the witness does not list the restaurant where the applicant worked for any of those periods. However, in the initial I-687 application the applicant failed to list any employment with [REDACTED] during the requisite statutory period. Further, in the instant I-687, the applicant listed employment with [REDACTED] from 1980 to 1981 and from 1985 through the end of the requisite period. Due to these inconsistencies, the employment verification letters have minimal probative value.

³ In addition, in the initial I-687 application the applicant failed to list a residence on [REDACTED] during the requisite statutory period.

Further, the employment verification letters of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. 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 comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's address at the time of his employment. In addition, the witness does not explain the inconsistencies in the letters regarding the periods of the applicant's employment with the company. For these additional reasons, the employment verification letters have minimal probative value.

The applicant has submitted a statement of earnings from the Social Security Administration, listing earnings for the applicant for 1973 to 1983, 1985, 1987 and 1988. The record also contains a copy of the applicant's 1977 California identification card. These documents are some evidence of the applicant's residence in the United States for some part of 1973 to 1983, 1985, 1987 and 1988.

The applicant has submitted a copy of his 1981 W-2 form and two original rent receipts dated February and November 1981. The rent receipts do not list the residence address to which they pertain. The W-2 lists the employer as [REDACTED] Irvine, California, and the applicant's residence on [REDACTED] in Santa Ana, California. However, the applicant did not list a residence on [REDACTED] during the requisite period in the instant I-687 application or in the initial I-687 application. In addition, in the instant I-687 application, the applicant failed to list any employment during the requisite period with [REDACTED] in Irvine.⁴

The applicant has submitted a copy of his 1982 W-2 form, his 1982 federal and state income tax returns and two original rent receipts dated March and July 1982. The rent receipts do not list the residence address to which they pertain. The W-2 lists the employer as [REDACTED] Irvine and the applicant's residence on [REDACTED] in Santa Ana. However, as previously stated, the applicant did not list a residence on [REDACTED] in the instant I-687 application or in the initial I-687 application.⁵ As previously stated, in the instant I-687 application, the applicant failed to list any employment during the requisite period with [REDACTED] in Irvine.⁶ The federal and state income tax returns list the applicant's residence on [REDACTED] in Santa Ana. However, the applicant did not list a residence on [REDACTED] during the requisite

⁴ The AAO notes that the applicant did list employment with [REDACTED] in the initial I-687 application.

⁵ The AAO notes that the applicant's 1982 state tax return lists his [REDACTED], as residing on [REDACTED].

⁶ The AAO notes that the applicant did list employment with [REDACTED] in the initial I-687 application.

period in the initial I-687 application, and in the instant I-687 application, the applicant stated that he resided on [REDACTED] from 1973 to 1980.

The applicant has submitted a copy of his 1983 W-2 forms, his 1983 federal and state income tax returns and two original rent receipts dated April and August 1983. The rent receipts do not list the residence address to which they pertain. The W-2's list the employers as [REDACTED] Newport Beach, California, and [REDACTED] in Costa Mesa. The W-2's and the tax returns list the applicant's residence on [REDACTED] in Santa Ana, California. As previously stated, the applicant did not list a residence on [REDACTED] during the requisite period in the initial I-687 application, and in the instant I-687 application, the applicant stated that he resided on [REDACTED] from 1973 to 1980. In addition, in the initial I-687 application, the applicant failed to list any employment during the requisite period with [REDACTED] and [REDACTED]. Further, in the instant I-687 application the applicant failed to list any employment during the requisite period with [REDACTED] and he stated he worked for [REDACTED] in 1982.

The applicant submitted two original rent receipts dated May and June 1984. The rent receipts do not list the residence address to which they pertain.

The applicant has submitted a copy of his 1985 W-2 forms, his 1985 federal and state income tax returns and two original rent receipts dated March and October 1985. The rent receipts do not list the residence address to which they pertain. The W-2's list the employers as [REDACTED] in Anaheim and [REDACTED] in Irvine. The W-2's and the tax returns list the applicant's residence on [REDACTED] in Santa Ana. However, in the instant I-687 application the applicant did not list a residence on [REDACTED] during the requisite period.⁷ In addition, in the two I-687 applications, the applicant failed to list any employment during the requisite period with [REDACTED] and, as stated previously, in the instant I-687 application, the applicant failed to list any employment during the requisite period with [REDACTED] in Irvine.⁸

The applicant submitted two original rent receipts dated May and August 1986. The rent receipts do not list the residence address to which they pertain.

The applicant has submitted a copy of his 1987 W-2 form, his 1987 federal and state income tax returns and two original rent receipts dated June and July 1987. The rent receipts do not list the residence address to which they pertain. The W-2 lists the employer as [REDACTED] in Irvine. The W-2 and the tax returns list the applicant's residence on [REDACTED] in Santa Ana. As previously stated, in the instant I-687 application the applicant did not list a

⁷ The AAO notes that in the initial I-687 application the applicant did list a residence on [REDACTED] during the requisite period.

⁸ The AAO notes that in the initial I-687 application the applicant did list employment with [REDACTED] during the requisite period.

residence on [REDACTED] during the requisite period.⁹ In addition, as stated above, in the instant I-687 application the applicant failed to list any employment during the requisite period with [REDACTED] in Irvine.¹⁰

The applicant has submitted a copy of his 1988 W-2 form, his 1988 federal and state income tax returns and two original rent receipts dated February and March 1988. The rent receipts do not list the residence address to which they pertain. The W-2 lists the employer as [REDACTED]. However, in the instant I-687 application, the applicant failed to list employment with [REDACTED] during the requisite period.¹¹ The W-2 lists the applicant's residence on [REDACTED] in Santa Ana. The tax returns list applicant's residence as [REDACTED] in Santa Ana. As stated previously, in the instant I-687 application the applicant did not list a residence on [REDACTED] during the requisite period.¹²

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period. More specifically, the AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the dates he resided and worked at particular locations in the United States and the dates of his absences from the United States during the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application¹³ and the initial I-687 application, signed by the applicant on May 30, 1990, and filed to establish his CSS class membership.

In the instant I-687 application, the applicant listed addresses in Santa Ana, California during the requisite period from 1973 to 1980 on [REDACTED] and from 1980 through the end of the requisite period on [REDACTED]. The applicant listed employment as a laborer in California from 1980 to 1981 at [REDACTED] Restaurant, in 1982 for the [REDACTED] from 1983 to 1985 at [REDACTED] and from 1985 through the end of the requisite period at [REDACTED]. The applicant listed one absence from the United States during the requisite period, in 1987.

⁹ The AAO notes that in the initial I-687 application the applicant did list a residence on [REDACTED] during the requisite period.

¹⁰ The AAO notes that in the initial I-687 application the applicant did list employment with [REDACTED] during the requisite period.

¹¹ The AAO notes that in the initial I-687 application the applicant did list employment with [REDACTED] during the requisite period.

¹² The AAO notes that in the initial I-687 application the applicant did list a residence on [REDACTED] during the requisite period.

¹³ The AAO notes that the instant I-687 application is missing page eight. Page eight requests the applicant to state whether certain grounds of inadmissibility apply to render him ineligible for temporary resident status. Because the application will be denied on other grounds, the AAO will not request the applicant to submit a completed page eight for the instant I-687 application.

In the initial I-687 application, the applicant listed addresses in Santa Ana, California during the requisite period from 1981 to 1987 on [REDACTED], and from 1988 through the end of the requisite period on [REDACTED]. The applicant listed employment as a cook assistant in California from February 1979 to 1988 at [REDACTED] in Irvine, and from April 1988 through the end of the requisite period at [REDACTED] in Costa Mesa.

At the time of his interview on November 14, 2006, the applicant stated that his wife has never been in the United States, and he listed a son born in Mexico in November 1985. On the initial I-687 application the applicant listed his son's date of birth as November 7, 1986. Therefore, the applicant was absent from the United States to conceive his son either in February 1985 or February 1986. In the instant I-687 and in the initial I-687, the applicant failed to list any absences from the United States in 1985 or 1986.

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 inconsistencies in the record regarding the dates when the applicant resided and worked at particular locations in the United States during the requisite period, and the dates of his absences from the United States during that period, are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. In rebuttal to the director's notice of intent to deny (NOID) the application, the applicant stated that inconsistencies in his testimony at his interview were because he was nervous and confused. No evidence of record resolves these inconsistencies. *It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies.* 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). These 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.

Finally, the AAO notes that on December 18, 1987, the applicant was charged with one count of violating section 602(J) of the California Penal Code (PC), *Trespass - Injure Property*, which violation is stated as having occurred on October 20, 1987. (Superior Court of California, Orange County, case number [REDACTED]) The record does not contain a full court disposition of this matter. Because the application will be denied on other grounds, the AAO will not request a full court disposition for this arrest. Although this arrest is some evidence in support of the applicant's residence in the United States for some part of 1987, considered individually and together with the other evidence of record discussed above, it does not establish the applicant's continuous residence for the duration of the requisite period.

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 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.

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.