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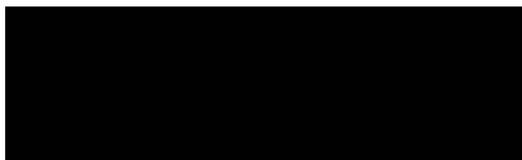
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-101-14915

Office: LOS ANGELES

Date: JUL 10 2008

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles. The 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 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.

On appeal, the applicant asserts his claim of eligibility for temporary resident status and submits evidence in an effort to support his claim.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the

documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

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

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her 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 for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on January 9, 2006. At part #30 of the Form I-687 where applicants were asked to list all residences in the United States since first entry, the applicant indicated that his addresses in the United States included: [REDACTED] City of Commerce, California, from October of 1981 to November of 1985; and [REDACTED] Pocomoke, Maryland, from November of 1985 to May of 1988. Similarly, at part #33, he indicated that he was self employed from May of 1981 to June of 1984; employed by Paint "R" Us from June of 1984 to November of 1985; and employed by Great Northern Forestry Service located in Baltimore, Maryland, from November of 1985 through 1988.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following evidence:

- A copy of a handwritten IRS Form 1099-MISC from [REDACTED] to the applicant for the 1987 tax year;

- A photocopy of the applicant's California Identification Card issued to him on August 11, 1986;
- A photocopy of the applicant's Maryland Driver's License with an expiration date of February 7, 1992;
- A photocopy of a Master Guide Certificate dated May of 1982 from the Southern California Conference of Seventh-day Adventist; on which it is indicated that the card was awarded to the applicant with a place name of Montemorelos University, and with a church name of Iglesia Bajio;
- Copies of the applicant's school transcripts from Montemorelos University located in Nuevo Leon, Mexico, and dated from 1982 to 1987 and 1989 to 1993; and,
- Copies of pictures of the applicant dated the winter of 1985, spring of 1986, winter of 1986, spring of 1987, summer of 1987, winter of 1987, and January of 1988.

Although some of these documents place the applicant in the United States at different points in time during the statutory period, collectively, they are insufficient to establish the applicant's continuous unlawful residence in the country during the requisite period.

The applicant also submitted the following attestations:

- A declaration from [REDACTED] in which he stated that he has known the applicant since approximately 1980 and that the applicant lived in his house from approximately November of 1981 to October of 1985. The declarant submitted as evidence a copy of a State Farm Home Owner's Insurance statement dated June of 2004 and an illegible copy of a memorandum of insurance. Here, the declarant fails to specify the address where the applicant allegedly lived. Because this declaration is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] in which he stated that he has known the applicant since November of 1981 and that he employed the applicant as a general helper in construction and gardening, as needed. The declarant submitted as evidence a copy of his birth certificate. Here, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the dates of the applicant's employment, the applicant's address(es) at the time of his employment, periods of layoffs, and whether the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he was introduced to the applicant in December of 1981 by a mutual friend, [REDACTED] of Tujunga, California, and that he has kept in touch with him over the years. Here, the affiant has failed to specify the frequency with which he saw the applicant during the requisite period. Although the affiant attested to knowing

the applicant during the requisite period, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. Because the affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A copy of a letter dated October 11, 1987 on the letterhead of Iglesia Central Hispana Adventista Del Septimo-Dia located at [REDACTED] Los Angeles, California. Although the letter is signed, the writer is not identified. The writer states that the applicant has been a member of the church in good standing since April 29, 1978, and that he resides at [REDACTED] Commerce, California. This letter is inconsistent with the information provided by the applicant in his Form I-687 application, where, when asked in part #31 to list all of his affiliations or associations with churches in the United States, he indicated "none." Because this letter contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Lastly, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this letter conflicts with other evidence in the record, and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of a letter dated October 30, 1987 from [REDACTED] of Great Northern Forestry Service of Baltimore, Maryland, in which he stated that the company employed the applicant on a full-time basis from November of 1985 to November of 1986. This declaration is inconsistent with the applicant's statement at part # 33 of his Form I-687 application where he indicated that the Forestry Service employed him from November of 1985 to 1988. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's address(es) at the time of his employment, periods of layoffs, or whether the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration conflicts with statements made by the applicant on his Form I-687 application, and because it does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of a declaration dated February 8, 2006 from [REDACTED] in which he stated that the applicant has resided in the United States since 1981, that the applicant is very religious, and that they attend the same church. Here, there is no basis for the applicant's claim of knowing that the applicant resided in the United States since 1981. The declarant fails to specify what church he and the applicant attended. It is further noted that the declarant's statement is inconsistent with

what the applicant indicated on his Form I-687 application at part #31 where he failed to list any affiliations or associations with any church or religious group.

- A declaration dated March 28, 2006 from [REDACTED] in which he stated that he has known the applicant since December of 1981 and that at that time the applicant was living at [REDACTED] City of Commerce, California. He further stated that both he and the applicant are Seventh-day Adventists and that during the early 1980's they both attended the [REDACTED] Seventh-day Adventist Church at least two to three times together. He also stated that he and the applicant developed a good friendship from December of 1981 to August of 1982. This letter is inconsistent with the information provided by the applicant in his Form I-687 application, where, when asked in part #31 to list all of his affiliations or associations with churches in the United States, he indicated "none." This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made.

In denying the application the director noted that the applicant had failed to submit sufficient evidence to establish his eligibility for temporary resident status. The director also noted that although the applicant claimed to reside in the United States since October of 1981, the record of proceeding contained copies of his transcripts from the Montemorelos University located in Mexico, with dates of attendance from 1982 to 1993. The director determined that it was more likely than not that the applicant was residing in Mexico during the requisite period.

On appeal, the applicant asserts that he took courses at the Montemorelos University not by being present on campus, but rather by receiving his assignments and returning them to the university completed. He further asserts that he completed his career courses on campus in Mexico from 1988 to 1989. The applicant submitted a copy of a Certificate of Training signed by the Conference Adventurer Pathfinder/Youth Director at the Southern California Conference dated May of 1982.

The applicant also submitted the following attestations:

- An English translated letter from the University of Montemorelos of Nuevo Leon, Mexico, in which the Director of Scholastic Services indicated that the applicant took courses offered by the university "at a distance" from 1982 to 1988, and that he attended classes and completed other courses in Mexico during the 1988 to 1989 academic year. Although the declarant indicates that the applicant took courses outside of Mexico, there has been no evidence submitted to substantiate that claim.
- An affidavit dated November 2, 2006 from [REDACTED], Pastor of Monrovia Spanish Seventh-day Adventist Church in which he stated that he was the pastor of the Central Spanish Seventh-day Adventist Church located at [REDACTED], Los Angeles, California, from October of 1981 to October of 1985, and that the applicant was an active member, attending all meeting held by the church, during that period. He also stated that the applicant is a faithful and accommodating member of the church. This affidavit is inconsistent with the information provided by the

applicant on his Form I-687 application, where, when asked in part #31 to list all of his affiliations or associations with churches in the United States, he indicated "none." It is also noted that this affidavit is inconsistent with the letter dated October 11, 1987 from the same church which states that the applicant was a member of the church from April of 1978 to October of 1987. These inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made.

In the instant case, the applicant has failed to submit sufficient evidence to establish his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to overcome the director's denial. The attestations submitted by the applicant are not credible, conflict with other evidence in the record, are lacking in detail and have minimal probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies and contradictions in the record noted above, seriously detracts from the credibility of this 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 that are inconsistent with statements he made on his Form I-687 application, and that are lacking in detail and minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.