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**U.S. Citizenship
and Immigration
Services**

LI



FILE: [REDACTED]
MSC-05-236-13190

Office: LOS ANGELES

Date: AUG 15 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts he has provided credible testimony and evidence of his residence in the United States since prior to January 1, 1982. The applicant resubmitted his previously furnished evidence.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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.

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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on May 24, 2005. Part 30 of this application requests the applicant to list his residences in the United States since his entry. The applicant responded that he resided at [REDACTED] Mendota, CA from November 1981 until December 1988. Part 33 of the application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with [REDACTED] Contractor in Mendota, CA from November 1981 until December 1988. The applicant's responses indicate that he has resided in the United States during the requisite period; however this claim is not corroborated by credible and probative evidence. The applicant has submitted various documents in support of his application. However, this proceeding will focus on the evidence submitted by the applicant to support his claim of continuous residence in the United States during the requisite period.

The applicant submitted "fill in the blank" notarized statements entitled "Affidavit" from [REDACTED] and [REDACTED]. However, these statements are not probative and credible evidence of the applicant's residence in the United States during the requisite period. 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).

The statement from [REDACTED] notarized on March 4, 2006, provides that he has personal knowledge that the applicant resided in Lake Forest, California from December 1983 until January 1984 and December 1998 until present. The statement indicates that the longest period he has not seen the applicant is for fifteen (15) years. This statement is inconsistent with the applicant's Form I-687, which provides that the applicant resided in Mendota, California during the period of November 1981 until December 1988 and he is presently residing in Santa Ana, California. The applicant has not provided a Lake Forest, California address for any of his residences in the United States. Furthermore, this letter does not contain a phone number to contact [REDACTED] to verify his testimony. Based on this inconsistency and the fifteen year gap in [REDACTED]'s knowledge of the applicant's residence in the United States, this statement is not credible and probative evidence of the applicant's continuous residence in the United States during the requisite period.

The statement from [REDACTED], notarized on March 1, 2006, provides that she knows the applicant is a very honest and hard worker. This statement fails to provide the time period during which [REDACTED] has known the applicant. This letter also fails to provide a phone number to contact [REDACTED] to obtain additional information. Therefore, this statement is not relevant and probative evidence of the applicant's continuous residence in the United States during the requisite period.

Lastly, the statement from [REDACTED], notarized February 27, 2006, provides that he has personal knowledge that the applicant has resided in Santa Ana, California from November 1981 until the present. This statement is inconsistent with the applicant's Form I-687, which provides that the applicant resided at [REDACTED] Mendota, CA from November 1981 until December 1988. Additionally, this statement fails to provide information on [REDACTED]'s first acquaintance with the applicant and the extent of their contact during the requisite period. Finally, this letter does not have a phone number to contact [REDACTED] to verify his testimony. Based on this statement's inconsistency and lack of detail, it is not credible and probative evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a letter from his purported former employer [REDACTED], president of [REDACTED] Labor Contractor. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and 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 (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [REDACTED] does not meet the criteria delineated in the regulations. The letter from [REDACTED] provides that the applicant was employed with his company from November 1981 until December 1988. [REDACTED] z states that he is unable to verify this information with payroll records because they were destroyed due to the fact that they are outdated. This letter contains several deficiencies. The letter fails to state the applicant's address during the period of employment. The letter also fails to indicate whether [REDACTED] is willing to provide testimony regarding the applicant's employment. Finally, the letter fails to indicate the source of [REDACTED] s recollection of the applicant's exact dates of employment, hours worked, and duties.

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 notarized statements provided by the applicant are not probative and credible evidence based on the above noted discrepancies. Additionally, the letter from [REDACTED] lacks detail on his ability to recall the applicant's employment history. Therefore, this letter can only be afforded minimal value as corroborating evidence of the applicant's continuous residence in the United States during the requisite period. 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). The applicant has not demonstrated with relevant, credible and probative evidence that his claim is probably true.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.