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FILE: [Redacted]  
MSC-05-244-13029

Office: LOS ANGELES

Date: **NOV 21 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.

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 failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite periods.

On appeal, the applicant explained that he has lived in the United States since March 20, 1981. The applicant attempted to explain that confusion resulted in his interview with an immigration officer due to the applicant's limited understanding of the English language.

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).

For purposes of establishing residence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant 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 applicant 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 and 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on June 1, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED], Los Angeles, California from 1981 to July 1983; [REDACTED], Los Angeles, California from July 1983 to February 1986; and [REDACTED], Van Nuys, California from February 1986 to October 1988. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc. the applicant stated, "None." At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Mexico for a family emergency from June 1, 1985 to June 15, 1985.

The applicant submitted a form affidavit from [REDACTED] dated March 4, 2003. [REDACTED] stated that he has personally known the applicant and to his personal knowledge the applicant resided in the United States in Los Angeles County from October 1981 to December 1999 and in Van Nuys, California, from January 2000 to present. This statement is inconsistent with the applicant's statement on Form I-687, where he indicated he moved to Van Nuys, California in 1986 rather than in 2000. This inconsistency calls into question the affiant's ability to confirm the applicant resided in the United States during the requisite period. In addition, the affiant failed to list the applicant's specific addresses during the requisite period. As a result, this affidavit is found to lack sufficient detail.

The applicant also provided an undated letter from [REDACTED] pastor of [REDACTED]. [REDACTED] stated that the applicant has been serving the congregation of Palabra de Vida since November 1986. This letter does not clearly confirm the applicant's residence in the United States during the requisite period because it is undated. In addition, this letter is inconsistent with the information provided by the applicant on Form I-687, where he failed to list [REDACTED] when asked to list all affiliations or associations with churches. Lastly, the letter does not conform to regulatory standards for

attestations by churches. Specifically, the letter does not state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

The record includes a copy of the applicant's marriage certificate, with English translation. The marriage certificate indicates the applicant was married on August 19, 1983 in Durango, Mexico. This information is inconsistent with the information provided on Form I-687, where the applicant indicated his only absence from the United States during the requisite period was in 1985. This inconsistency calls into question whether the applicant resided continuously in the United States during the requisite period.

The record includes a sworn statement from the applicant, dated June 30, 2006 and written in the Spanish language. The statement appears to indicate the applicant first entered the United States in 1986.

In denying the application, the director determined the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite periods. Specifically, the director indicated the applicant had stated under oath orally and in writing that he arrived in the United States for the first time in 1986.

On appeal, the applicant explained that he has lived in the United States since March 20, 1981. The applicant attempted to explain that confusion resulted in his interview with an immigration officer due to the applicant's limited understanding of the English language. The applicant indicated that, at his interview with an immigration officer, the officer failed to explain that an interpreter was needed. The applicant explained that he was nervous and does not speak English well, so it took him some time to respond to the officer. This explanation is found not to be reasonable under the circumstances. Specifically, the applicant's sworn statement was written in the Spanish language. Therefore, his limited understanding of the English language fails to explain why he appears to have stated in the Spanish language that he first entered the United States in 1986.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted an affidavit and letter that lack sufficient detail, fail to confirm the applicant resided in the United States during the requisite period, conflict with the information provided on Form I-687, and fail to conform to regulatory standards. Specifically, the affidavit from [REDACTED] is inconsistent with Form I-687 and lacks sufficient detail. The letter from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period and does not conform to regulatory standards. In addition, the applicant submitted a copy of his marriage certificate that is inconsistent with Form I-687.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and supporting affidavits, and 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.