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20 Mass. Ave., N.W., Rm. 3000  
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Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 05 253 16796

Office: LOS ANGELES

Date: **AUG 07 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.

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. 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 that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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).

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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that relates to the requisite period:

Affidavits/Statements

- [REDACTED] submitted a sworn statement wherein he stated that he was the applicant's brother, that the applicant arrived in the United States in December of 1981, and that the affiant lived with the applicant at [REDACTED] from December of 1981 until 1987. The affiant further states that during this time the applicant worked as a handy man doing “any kind of work.”

[REDACTED] also submitted an unsworn statement indicating that the applicant (his brother) has been in the United States since December of 1981, and that in May of 1982 the two lived together at [REDACTED]

- [REDACTED] submitted a sworn statement wherein she stated that she is the applicant's sister, that she has personal knowledge that the applicant has resided in the United States from January of 1981 to the present (date of affidavit – May 5, 1990), that when the applicant came to the U.S. in January of 1981 he came to live at her residence, and that she has been in continuous contact with him from January of 1981 until the present (5/5/90). The affiant does not state the address where the applicant resided when he first arrived in the United States.

The affidavit of [REDACTED] is inconsistent with the affidavit submitted of [REDACTED]. [REDACTED] stated in his affidavit that he was the brother of the affiant and that the affiant came to the United States in December of 1981 and resided with him from that time until 1987.

- [REDACTED] submitted a sworn statement wherein he stated that he has personal knowledge that the applicant has resided in the United States from July of 1981 until the present (date of affidavit – 5/8/90). The affiant states that he and the applicant met through work and have remained friends.
- [REDACTED] submitted a sworn statement wherein he stated that he has personally known the applicant since December of 1981. The affiant states that he and the applicant were members of the same church in Los Angeles, and are close friends.
- [REDACTED] submitted an unsworn statement dated March 25, 2002 wherein she states that she has known the applicant since January of 1981. [REDACTED] attests to the applicant's good character, and provides no additional information.

[REDACTED] submitted an unsworn statement dated April 24, 2002 stating that she had known the applicant since 1984 when the two worked together as missionaries in the Hispanic community. [REDACTED] states that she and the applicant went to "prisons, parks, and [REDACTED] mission for about 6 years." [REDACTED] attests to the applicant's good character, and provides no additional information.

#### Applicant's Statements

- The applicant submitted a sworn statement on November 29, 2004 stating that he resided at [REDACTED] in 1982, and departed this country from May 2, 1987 until May 15, 1987.
- The applicant submitted a sworn statement on February 15, 2006, wherein he stated that he arrived in the United States prior to January 1, 1982 and lived with his brother who provided for his room and board. The applicant states that when he found work he was paid cash because of his illegal status.

The applicant submitted an unsworn statement on appeal. In that document the applicant states, in pertinent part, that he can not submit proof of continuous residence from 1/1/82 – 5/4/88 because was living with his brother from 12/81 – 1987, and his brother was supporting the applicant and paying all utilities. The applicant states that he worked as a handyman for cash, and did not file tax returns because he feared being deported.

Although the applicant has submitted several affidavits/witness statements and his sworn statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. In the affidavits/witness statements submitted, none of the affiants/witnesses provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant/witness 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. The affiants and witnesses state generally how they met the applicant, and that they had a social or casual relationship with him. The affidavits and witness statements contained only general statements of an ongoing relationship with the applicant without specific detail establishing the specifics of the relationship such as dates and/or places of contact, knowledge of life events experienced by the parties, or any other documentation to corroborate the affiant's/witnesses' generalized statements. To be considered probative and credible, affidavits or witness statements must do more than simply state that an affiant or witness knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant/witness does, by virtue of that relationship, have knowledge of the facts alleged. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire 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. Further, as noted in 8 C.F.R. § 245a.2(d)(6), 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 will be judged according to its probative value and credibility. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits and statement submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

#### Employment Statement

- office manager and owner of Pipco Fruit Company, submitted an unsworn statement wherein he states that the applicant, known to him as [REDACTED] worked for the Pipco Fruit Company from July 28, 1986 to August 30, 1986 picking and packing grapes.

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 statement submitted by the applicant is of little probative value as it fails to provide all information required by the above-cited regulation. The statement does not

provide the applicant's address during employment, show periods of layoff (or state that there were none), declare whether the information attested to was taken from employment records, identify the location of any such records, or state whether the records are accessible, and if not, why not.

### Church Attestations

- [REDACTED] pastor of Centro Evangelistico Ebenezer, submitted a witness statement indicating that the applicant had been an active member of his congregation since 1982.
- [REDACTED], minister of Iglesia Christiana Penetecostes, submitted a witness statement indicating that the applicant had resided continuously in the United States from December 8, 1984 until January 10, 1988, and that the applicant was a member of [REDACTED] church since January 10, 1984.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
- (A) Identifies applicant by name;
  - (B) Is signed by an official (whose title is shown);
  - (C) Shows inclusive dates of membership;
  - (D) States the address where applicant resided during membership period;
  - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
  - (F) Establishes how the author knows the applicant; and
  - (G) Establishes the origin of the information being attested to.

The church attestations referenced above do not state the address where the applicant resided during the membership period, do not establish how the attester knows the applicant, and do not establish the origin of the information being attested to. The statements are, therefore, of little evidentiary value as they do not comply with the requirements of the above cited regulation.

The evidence submitted by the applicant, and listed above, does not establish the applicant's presence in the United States for the requisite time period. Taken as a whole, the evidence submitted

lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. As previously stated, pursuant to 8 C.F.R. § 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 during the requisite period.

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.