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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted]  
MSC-05-244-14796

Office: DENVER

Date: AUG 27 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:

[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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. 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, Denver. 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.<sup>1</sup> 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.

The applicant is represented by counsel on appeal. Counsel asserts that the applicant has met the eligibility requirements for temporary resident status by a preponderance of the evidence. Counsel maintains that the district director failed to give proper weight to the affidavits attesting to the applicant's entry and residence in the United States for the requisite period.

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.

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<sup>1</sup> The AAO observes that both the Notice of Intent to Deny (NOID) and the ultimate decision in this case contain a finding that the applicant failed to establish class membership. However, the district director also adjudicated the application for temporary residence on the merits. Consequently, the AAO will review the evidence of record in this case on the merits of the application for temporary resident status pursuant to the terms of eligibility outlined in the settlement agreements.

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 meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 1, 2005, indicating that he was born in Mexico on July 14, 1971. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed several post office box numbers in [REDACTED] as his residences for the statutory period. He also listed the [REDACTED] as a residence from May 1988 to

May 1992. Similarly, at part #33, where applicants are required to list all employment in the United States since initial entry, the applicant indicated that he was employed for the statutory period of time by M&D Farms, Parker, AZ, from May 1981 to August 30, 1988.

The AAO notes that the evidence of record in this case includes 1993 Arizona criminal conviction for domestic violence. The applicant's motion to set aside the conviction was granted on August 10, 2006. Additionally, the record before the AAO indicates that an immigration judge granted the applicant a period of thirty days voluntary departure in a decision dated June 2, 2004.

At an interview conducted on October 21, 2005 before a U.S. Citizenship and Immigration Services adjudications officer the applicant stated that he entered the United States sometime in May 1981, at the age of 10, with his father to perform seasonal agricultural work in Arizona. He claimed he was employed at the time by ██████████ a part time school teacher and farm laborer contractor.

Subsequent to his interview, the applicant submitted several affidavits on January 20, 2006, in support of his application for temporary residence. The record contains a statement from ██████████, explaining that the applicant worked for her from May 1, 1981 to August 30, 1988 as a seasonal agricultural worker subcontracted to a number of farms. ██████████ explained that she did not have a contractor's license because she only worked 30-50 days during the summer months. She also stated that she paid the laborers in cash and that she had no records to verify the applicant's employment with her because a water line break flooded her home in November 1986 and destroyed her records. The statement from ██████████ is not dated, but contains a notary's signature with an expiration date of January 4, 1991. The record also contains a second, handwritten statement from ██████████ wherein she stated that the applicant worked for her during the summer months from May to August from 1981 to 1988, and that the applicant lived with his parents in a trailer park in ██████████ This statement is also undated.

Additionally, the applicant submitted a notarized statement from ██████████ dated August 1, 1990. ██████████ claimed that he has lived in ██████████ for 47 years and that he has known the applicant since 1982. A notarized statement from ██████████, dated August 7, 1990, stated that he has known the applicant since 1981. Ultimately, a notarized statement from ██████████ dated July 30, 1990, claimed that he also has known the applicant since 1981.

On March 28, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any probative, independently verifiable documentation beyond his own assertions that he met the requirements for eligibility pursuant to the terms of the settlement agreements. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

In response to the NOID, the applicant submitted a sworn declaration dated April 25, 2006. The applicant re-affirmed that he initially entered the United States at the age of ten, with his father, and that he performed seasonal agricultural work during the summer months. He stated that he lived with [REDACTED] and was employed by [REDACTED] has since passed away. The applicant explained that he was paid in cash, and that he also worked as a general handyman doing small jobs in homes.

The AAO notes that the affidavits submitted by the applicant from [REDACTED] are of limited probative value. None of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or how they have direct, personal knowledge of the applicant's entry into the United States and the circumstances of how he survived, considering that the applicant allegedly first entered the United States when he was approximately 10 years old. The lack of detail regarding the events and circumstances of the applicant's entry and residence is significant given each declarant's claim to have known the applicant for a period of 10 years or more. For these reasons, all of these declarations listed above have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

The director denied the application for temporary residence on June 8, 2006. In denying the application, the director discussed the affidavits noted above. The director noted that it was unclear how [REDACTED] would specifically remember the dates when the applicant is alleged to have worked for her when all of her records were destroyed. The director also noted that Mrs. [REDACTED] stated that she employed farm laborers only for seasonal work, for approximately 30-50 days per year. As regards the affidavits from [REDACTED] the director concluded that they lacked factual specificity and therefore were of limited probative value.

On appeal, counsel argues that two of the affiants, [REDACTED] are now deceased. Counsel asserts that [REDACTED] would remember specific dates because she was also a teacher. Ultimately, counsel maintains that the applicant has met the eligibility requirements by a preponderance of the evidence. Ultimately, in further support of the application for temporary residence, counsel submitted statements from the applicant's father, [REDACTED] and from the following individuals: [REDACTED]

[REDACTED] All of the statements are dated July 31, 2006 or August 2, 2006. All of the affiants aver that they have known the applicant for a number of years, including the requisite statutory period, or that they know where he resided for some span of the requisite period of time. However, none of the statements provide factually specific information or are otherwise independently verifiable. Thus, they are of limited probative value and are accorded such weight as is appropriate.

The AAO agrees with the district director's assessment of the affidavits submitted in support of the application for temporary residence. The AAO notes that the applicant entered the United States as a child. There is no documentary evidence to establish where or with whom the

applicant lived, or how he survived as a child. The applicant's assertion that he was performing work as a farm laborer at the age of 10 is not credible.

In summary, the applicant has not provided any probative evidence of residence in the United States relating to the period from January 1, 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative 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. Given the lack of credible supporting documentation, it is concluded that he 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.