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U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

AUG 29 2008

MSC 05 090 15034

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, California. 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, on December 29, 2004. On February 14, 2006 the applicant was interviewed by a Citizenship and Immigration Services (CIS) officer and on that date the CIS officer requested further evidence from the applicant. On March 9, 2006, the applicant provided his response. On December 27, 2006 upon review of the record, the director denied the application, determining 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 submits a letter and asserts that at the interview he was very nervous and provided dates without assurance of what he was saying. The applicant assures that he has lived in the United States since 1981 and applied for the "amnesty" program in 1987.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period. The AAO considers only those documents relevant to establishing the applicant's entry into and continuous unlawful residence for the pertinent time period.

On the Form I-687 filed December 29, 2004, the applicant indicates that he last entered the United States in December 1981. The applicant lists his address for the pertinent time period as: [REDACTED] North Hollywood, California from September 1981 to 1985; [REDACTED] Hills, California from 1985 to 1987; and [REDACTED] Hollywood, California from 1987 to June 2004. The applicant lists his only absence from the United States during the applicable time period as August 1987 to visit his family in Mexico. The applicant lists his employment during the applicable time period as: self-employed construction in North Hollywood, California from 1981 to 1987; and for Argubright Construction in North Hollywood, California from 1987 to the time he filed the application. The applicant's date of birth is January 2, 1967, thus he was 14 years old when he claims to have entered the United States.

The record also includes letters and affidavits submitted to substantiate the applicant's entry into and continuous unlawful residence for the requisite time period including:

- A November 29, 2004 letter signed by [REDACTED] Perris, California who states: that the applicant lived in the United States from 1981 to the present; that he met the applicant when he lived at [REDACTED] California; and that he and the applicant became good friends and have kept in touch.

- A November 29, 2004 letter signed by [REDACTED] of North Hollywood, California who declares: that the applicant lived in the United States from 1982 to present; that he met the applicant when the applicant lived at [REDACTED] California; that the applicant was his neighbor; and that now he and the applicant are good friends and have kept in touch.
A December 3, 2004 letter signed by [REDACTED] of Pacoima, California who states that he met the applicant while the applicant was working for him at [REDACTED] California in 1986 and that he has maintained a good friendship with the applicant and always invites him to parties and family reunions.
- An October 15, 2004 letter signed by [REDACTED] of Northridge, California who states that he has known the applicant since 1987 to be living in the United States.
An October 14, 2004 letter signed by [REDACTED] of Northridge, California who declares that she knows the applicant lived in the United States from 1987 to the present and that the applicant performed miscellaneous construction work for her company.

The record also includes several photocopies of envelopes addressed to the applicant: two of the envelopes show a [REDACTED] address with indiscernible postmarks; and one of the envelopes shows a [REDACTED] Hollywood address with an indiscernible postmark. The record also includes pay receipts issued to the applicant for construction work in January, March, September, and December 1987 and January 1988 by Argubright Construction. The record also includes rent receipts issued to the applicant for the rent at [REDACTED] 1980, 1982 and 1985.

The record further includes the applicant's testimony taken at the applicant's February 14, 2006 interview. When asked, the applicant recalled that he had met [REDACTED] in 1987; met [REDACTED] in 1984 or 1985; and met [REDACTED] in 1981 when he first arrived in the United States.

The director denied the application, determining that upon review of the record, the applicant had submitted information from friends that contradicted his oral testimony and the information on his Form I-687. The director concluded 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. As observed above, the applicant asserts on appeal that he was very nervous at the interview and provided dates without assurance of what he was saying.

The AAO has reviewed the evidence of record and finds that the applicant has not established his entry into and continuous unlawful residence in the United States for the applicable time period.

The applicant lists his address on the Form I-687 as [REDACTED] Hollywood, California from September 1981 to 1985. The letter submitted from [REDACTED] indicates that he met the applicant in 1981 when the applicant lived at [REDACTED] North Hollywood, California. The letter submitted from [REDACTED] indicates that he met the applicant in 1982 when the

applicant lived at [REDACTED]-Hollywood, California. These addresses conflict with the information provided on the applicant's Form I-687. In addition, the photocopies of the envelopes submitted by the applicant show the applicant's addresses as [REDACTED] Valley, California and [REDACTED] North Hollywood, California, and although one address is the same address provided by [REDACTED] neither address is listed on the applicant's Form I-687. The AAO also notes that the applicant submitted rent receipts for payment of rent at [REDACTED] 1982 and 1985, an address that is not declared on the Form I-687. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further, neither of the letter-writers provides sufficient detail of the circumstances and events surrounding the letter-writers' initial meeting with the applicant and their subsequent interaction with the applicant to establish their knowledge of the applicant's continuous unlawful presence in the United States for the requisite time period. The letters lack concrete details that demonstrate sufficient contacts of the letter-writers with the applicant to establish the applicant's presence for the requisite period. The letters are insufficient to enable a conclusion that the applicant continuously resided in the United States in an unlawful status for the requisite time period.

Similarly, the letter signed by [REDACTED] fails to provide details including the nature and frequency of his contact with the applicant and whether the applicant was absent from the United States during the requisite period. The general nature of information that characterizes this letter lacks sufficient indicia to establish the reliability of the assertion contained therein. In addition, the applicant at his interview stated that he first met [REDACTED] in 1984 or 1985, not 1986. Although dates may be difficult to remember, when viewed in light of the other contradictory evidence submitted and the lack of concrete details regarding the interaction between the letter-writer and the applicant, the letter has minimal probative value.

The letter of [REDACTED] when viewed on its own fails to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), which requires that letters from employers should be on employer letterhead stationery and should include declarations that the information was taken from company records, 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. However, in this matter, the applicant has also provided copies of pay receipts issued by Argubright Construction in 1987 and 1988 thus validating the information in [REDACTED]. The AAO finds that the applicant has provided sufficient information to establish that he resided in the United States in 1987 and 1988.

The deficient letters and the applicant's own statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The letters lack credibility and probative value for the reasons noted. The letters submitted do not provide credible, probative details of the applicant's entry into the United States and continuous unlawful presence to 1987. 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 information

in the letters and the lack of any other credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States to 1987 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.