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U.S. Citizenship  
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Services

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[REDACTED]

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FILE:

[REDACTED]  
MSC-05-215-10159

Office: LOS ANGELES

Date:

**JUL 23**

IN RE:

Applicant: [REDACTED]

APPLICATION:

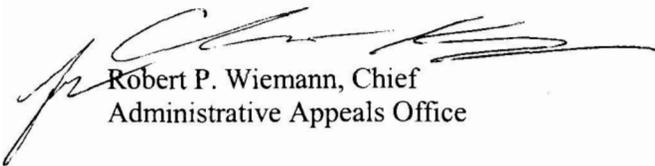
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that the applicant stated in his interview with a *Citizenship and Immigration Services (CIS)* officer that he was absent from the United States from May 12<sup>th</sup> or 15<sup>th</sup> 1987 until July 18, 1987—a period of greater than 45 days. In addition, in an interview with an immigration inspector in 1998, the applicant stated under oath that he had resided in the United States only since 1993.

On appeal, the applicant and counsel state that when the applicant was interviewed by the immigration officer in 1998, he was deeply affected by the recent death of his mother and mistakenly told the officer that he first entered the United States in 1993. The applicant asserts that he first entered the United States in January 1981 and that he resided in the U.S. continuously throughout the requisite period. Counsel states that the director erred in finding that the applicant failed to meet his burden of proof.

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)(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) 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. See 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).

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 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, 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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to CIS on May 3, 2005. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed an absence from May 1987 to July 1987. On July 17, 2006 the applicant testified before an immigration officer that he had been absent from May 12<sup>th</sup> or 15<sup>th</sup>, 1987 until July 18, 1987. Assuming the applicant departed the United States on May 15, 1987, this would be an absence of 63 days. The applicant has not disputed the duration of this absence.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). The applicant’s admitted absence from the United States of more than 45 days is a clear break in any period of continuous residence he may have established. As he has not provided any evidence that his return to the United States could not be accomplished due to “emergent reasons,” 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.

In addition, information provided by the applicant on the instant Form I-687 application conflicts with information previously provided by the applicant on another Form I-687 application which he submitted in 1995. For example, on the Form I-687 application submitted in 1995, the

applicant listed his address as [REDACTED] for the period from December 1981 to April 1985. That address is not listed on the Form I-687 application filed in 2005. Instead, the applicant has listed his address as [REDACTED] for the period January 1981 to December 1983 and [REDACTED] from February 1984 to December 1985.

With respect to past employment, the applicant listed on the Form I-687 application submitted in 1995 that he was employed by [REDACTED] from December 1981 to April 1985; by [REDACTED] from April 1985 to April 1986; and by [REDACTED] from May 1987 to June 1987. On the Form I-687 application submitted by the applicant in 2005, he did not list any employment by [REDACTED] and listed employment with Hasegawa Farms from February 1982 to February 1985.

The applicant also submitted a Form for Determination of Class Member in *CSS v. Meese* which he signed on November 3, 1995. On that form the applicant stated that he first entered the United States in December 1981. However, the applicant now claims to have entered the United States for the first time in January 1981. *Declaration of [REDACTED]* ¶ 2 (September 21, 2006).

These material inconsistencies in the record detract from the credibility of the applicant's claim to have resided continuously in the United States throughout the requisite period.

The applicant has also submitted affidavits from the following friends and acquaintances: [REDACTED] and [REDACTED]. These affidavits lack probative details such as under what circumstances the affiants met the applicant, how they date their acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently they had contact with him. The record also contains letters from previous employers including letters from [REDACTED] of Reiter Brothers, Inc., [REDACTED] of Haswegawa Farms, Inc., and [REDACTED] (wife of [REDACTED]). Like the affidavits submitted by the applicant, these letters are lacking in probative detail. In addition, these letters do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) relating to past employment records. Specifically, these letters do not provide the applicant's address at the time of employment, do not state the exact period of employment, do not indicate whether the information was taken from official company records, and do not indicate where such records are located. Because these affidavits and letters lack probative detail, they can be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has also submitted some employment records including pay stubs from 1985 and later years, as well as a copy of an envelope purportedly sent by the applicant from the United States to his wife in Mexico on February 13, 1985. This documentation submitted by the applicant is not sufficient to establish the applicant's residence in the United States from before January 1, 1982 and throughout the duration of the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 contradictory statements on his 1995 and 2005 Form I-687 applications and his 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 for the requisite period 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.