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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: JUL 23 2008

MSC 05 239 12529

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 remanded for further action, you will be contacted.

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 May 27, 2005. The applicant was interviewed on February 6, 2006 in conjunction with the Form I-687. The director denied the application because of inconsistencies in the applicant's testimony and the declarations submitted on his behalf. On appeal, counsel for the applicant asserts that the director improperly denied the application as the director did not issue a Notice of Intent to Deny (NOID) the application. Counsel submits the applicant's declaration in an effort to explain the inconsistencies in the record.

The AAO acknowledges counsel's assertion that a NOID must be issued prior to denying an application for temporary resident status pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. Counsel is mistaken. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. The director did not deny the application for class membership.

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.* 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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

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 through the date he attempted to file the application. On the Form I-687, the applicant listed his addresses during the pertinent time period as: [REDACTED], Coachella, California from January 1981 to December 1984; and [REDACTED] Paramount, California from December 1984 to January 1990. The applicant listed his absences from the United States as: June 1985 to Mexico to get married; June 1987 to Mexico for a vacation; and July 2003 to Tijuana, Mexico for a day trip. The adjudicator added in red ink, an absence from the United States in June 1986, for less than one week, to register the birth of a child. The applicant listed his employer during the applicable time period as [REDACTED] in Compton, California from June 1981 to August 1989. The applicant notes his mother passed away in March 1988. The applicant lists his date of birth as April 5, 1963.

The record contains several declarations submitted to support the applicant's residency in the United States for the requisite time period:

- A declaration dated April 22, 2005 but signed by [REDACTED] on April 27, 2005 who declares that she resided in Durango, Mexico during 1982 to 1988 and that she knew the applicant lived in the United States because the applicant kept in contact with her.
- A declaration dated April 22, 2005 but signed by [REDACTED] on April 28, 2005 who declares that he resided in Durango, Mexico during 1982 to 1988 and that he knew the applicant entered the United States illegally but did not know where.
- A declaration dated April 22, 2005 but signed by [REDACTED] on April 28, 2005 who declares: that he resided at [REDACTED] in Paramount, California from 1982 to 1988; that he knows the applicant because he is the applicant's brother; that when the applicant arrived from Mexico, the applicant called him to pick him up; and that the applicant lived with him for several years until the applicant could afford a place of his own. An affidavit dated April 26, 1990 also signed by [REDACTED] who declares that the applicant came to live with him in January 1981 in Coachella, California and that in December 1984 he and the applicant moved to the Somerset address in Paramount, California.
- A declaration dated April 22, 2005 but signed by [REDACTED] on April 28, 2005 who declares: that she resided at [REDACTED] in Paramount, California from 1982 to 1988 as well as currently; that she met the applicant in June 1981; and that the applicant resided at her address until he could afford a place of his own. An affidavit dated June 27, 1990 also signed by [REDACTED] who declares that the applicant lived with her from December 1984 to January 1990; that the rental receipts were issued to her; and that she had given the applicant receipts to prove his residence for the time he lived with her. Ms. [REDACTED] notes in her affidavit that the longest period of time she has not seen the applicant is one week.
- A declaration dated April 22, 2005 but signed by [REDACTED] on April 30, 2005 who declares; that she lived in Mosca, Colorado during the years 1982 to 1988; that she has known the applicant since June 1979; that she met the applicant on a trip with her husband; that she and the applicant have kept in contact; and that when she visited California she would stay at the applicant's house.
- A declaration dated April 22, 2005 but signed by [REDACTED] on May 2, 2005 who declares: that she was born in Durango, Mexico in June 1967; that she lived in Durango, Mexico during the years 1982 to 1988; that she has known the applicant since June 1978 because they attended the same school; that when the applicant returned to Mexico to get married they caught up on each other's lives; and that the applicant told her that he entered the United States illegally but did not tell her where.
- A declaration dated April 22, 2005 but signed by [REDACTED] on May 2, 2005 who declares: that he was born in November 1960; that he lived in Durango, Mexico during the years 1982 to 1988; that he has known the applicant since 1977 because they attended the same elementary school; and that the applicant told him that he entered the United States illegally but did not tell him where.
- A declaration dated April 22, 2005 but signed by [REDACTED] on May 6, 2005 who declares: that he lived in Durango, Mexico during the years 1982 to 1988; that he has

- known the applicant since June 1972; and that the applicant told him that he entered the United States illegally but did not tell him where.
- A declaration dated April 22, 2005 but signed by [REDACTED] on May 6, 2005 who declares: that he was born in Colorado in November 1974; that he has known the applicant since June 1981 (when the declarant would have been six or seven years old); that his family and the applicant's family spend time on the beach and at theme parks; and that the applicant told him that he entered the United States illegally but did not tell him where.
 - A declaration dated April 22, 2005 but signed by [REDACTED] on May 6, 2005 who declares: that he lived in Mosca, Colorado during the years 1982 to 1988; that the applicant is his brother; that he and the applicant have kept in touch with each other; that the applicant called him from Mexico to tell him that he was coming to the United States; and that the applicant told him that he entered the United States illegally but did not tell him where.
 - An affidavit dated April 26, 1990 signed by [REDACTED] who declares that the applicant lived in Coachella, California from January 1981 to December 1984 and in Paramount, California from December 1984 to January 1990.
 - An affidavit dated April 26, 1990 signed by [REDACTED] a who declares that the applicant lived in Coachella, California from January 1981 to December 1984 and in Paramount, California from December 1984 to January 1990.
 - An affidavit dated April 26, 1990 signed by [REDACTED] who declares that he met the applicant in January 1981 when the applicant moved in with the applicant's brother. The affiant declares that the applicant lived in Coachella, California from January 1981 to December 1984 and in Paramount, California from December 1984 to January 1990.
 - An affidavit dated April 26, 1990 signed by [REDACTED] who declares that the applicant, his cousin, came to the live with the applicant's brother in January 1981 and that he and the applicant visit each other's homes and that the applicant lived in Coachella, California from January 1981 to December 1984 and in Paramount, California from December 1984 to January 1990.

The record also includes the applicant's responses to the class membership form. The applicant indicates that he left the United States on two occasions: (1) on June 16, 1985 to get married and returned on June 30, 1985; and (2) on June 12, 1987 for a vacation and returned on June 30, 1987. The record further includes the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, filed October 26, 2001. In a March 31, 2004 NOID regarding the adjudication of the Form I-485, the director noted that the applicant testified under oath on February 20, 2002 that he had departed the United States three times: in June 1985, in 1987, and in 1994 with advance parole. The director noted that the record contained a birth certificate for the applicant's child born in Mexico in 1986 that showed that both the applicant and his wife had registered the baby's birth but that the applicant denied going to Mexico to attend the child's birth or to register the child. The record contains the applicant's rebuttal statement dated April 24, 2004, wherein the applicant states that he was not present at the child's birth and that it is not uncommon for the father's name to appear on the birth certificate even though the father was not there.

The director notes in the February 17, 2006 decision, that the applicant at his February 6, 2006 interview acknowledged he was in Mexico in 1986, but did not include it on the Form I-687 because it was only for a week thus the applicant did not think it was important.

The record contains rental receipts issued to the applicant beginning in March 1981 to April 1982 and one issued in January 1983 for rent of premises at [REDACTED] (Coachella, California) signed by [REDACTED] and [REDACTED]. The record also contains two retail receipts for the 1981 year, one retail receipt for 1982, eight retail receipts for 1987 with only two of the retail receipts including the applicant's name or portion of his name, and rental receipts issued to [REDACTED] on various dates in 1984, 1985, 1986, and 1987. The record further contains a photocopy of the applicant's child's immunization record, with the first date of immunizations occurring July 26, 1986. The applicant's social security administration statement for the years 1990 through 2001 is also in the record.

On appeal, counsel for the applicant submits the applicant's declaration to address the inconsistencies in the record. The applicant states that he did not include the 1986 absence to register the birth of his child on the Form I-687 because he did not think it was important. The applicant also notes that he asked a friend to write his rebuttal to the director's NOID issued on his Form I-485 application and that the applicant made the statement that he was not in Mexico in 1986 because he did not think his short trip was important. The applicant notes that he has maintained close contact with his friends and relatives in Colorado and Mexico and that he always tells them about his life, so those individuals know about his day-to-day affairs. The applicant explains that when he first came to the United States he lived with his brother and sister-in-law on [REDACTED] in Paramount, California until he could move out on his own; but that he also lived with friends at [REDACTED] in Coachella, California and the apartment there was in his name. The applicant indicates that as he had to do a lot of commuting for his work, he lived at both places. The applicant indicates that he requested that the current manager of the Coachella property write out receipts verifying his tenancy in the building in 1981, 1982, and 1983.

The documents listed above and the applicant's explanations for his inconsistent testimony comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. Most of the declarations submitted do not establish that the applicant entered the United States in a particular year and moreover do not demonstrate that the declarants had personal knowledge of the applicant's entry and continuous unlawful presence; instead the declarants rely on the applicant's representations that he entered the United States illegally. The AAO acknowledges the applicant's brother's, [REDACTED], April 22, 2005 declaration wherein [REDACTED] states that he picked the applicant up when the applicant arrived from Mexico; that he lived in Paramount, California from 1981 to 1988, and that the applicant lived with him for several years in Paramount, California until he could move out. This declaration conflicts with an earlier affidavit, dated April 26, 1990, wherein Mr. [REDACTED] stated that the applicant came to live with him in January 1981 in Coachella, California until December 1984 when he and the applicant moved to the Somerset address in Paramount, California. Likewise, the April 22, 2005 declaration of [REDACTED], the applicant's sister-in-law, and her affidavit dated June 27, 1990 contain inconsistencies. In one statement, [REDACTED] indicates she first met the applicant in June 1981 and that the applicant resided at her address in Paramount, California from 1982 until he could afford a place of his own and in a different statement indicates that the applicant lived

with her from December 1984 to January 1990 at the Somerset address in Paramount, California. Her statement that the longest period of time she has not seen the applicant is one week appears to conflict with the applicant's testimony that on more than one occasion he was outside the United States for more than one week. The AAO does not find these documents probative as the information contained in the documents is either outside the personal knowledge of the declarants or the information is inconsistent with other testimony.

The AAO has also considered the receipts that are in the record. The AAO does not find the commercial retail receipts probative as these receipts do not contain sufficient identifying information and also are evidence of one-time transactions. These receipts do not establish continuous residence in the United States. Similarly, the rental receipts provided are questionable. The applicant on appeal indicates that the rental receipts for rent of premises at [REDACTED] (Coachella, California) signed by [REDACTED] and G [REDACTED] are not receipts signed by the manager of the premises at the time the applicant lived there. The record does not contain evidence sufficient to verify that these receipts came from the records pertaining to the rental of these premises. The rental receipts signed by the applicant's sister-in-law also fail to establish that the applicant entered the United States prior to January 1, 1982 and resided continuously in the United States for the requisite time period. For reasons noted above, the information submitted from [REDACTED] is internally inconsistent as well as inconsistent with other information in the record.

The AAO has reviewed the applicant's explanations regarding the inconsistencies in the record regarding his initial claimed residence in the United States and the inconsistencies regarding his absences from the United States. The explanations given are not credible. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the deficient declarations and affidavits and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period, the applicant has not provided sufficiently detailed documentation to corroborate his claim of continuous residence for the entire requisite period. The absence of consistent, detailed affidavits detracts from the credibility of his claim. Without independent, objective evidence, consisting of more than the applicant's statement, the applicant has not established eligibility for this benefit. 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

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