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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-187-11288

Office: LOS ANGELES

Date: **NOV 06 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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, or *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, and 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 to U.S. Citizenship and Immigration Services (CIS). The director determined that the applicant was not discouraged to file a completed Form I-687 during the original legalization period and 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, therefore, denied the application, finding that the applicant was statutorily ineligible and had not met his burden of proof to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he attempted to file a completed Form I-687 between 1987 and 1988, and that he has provided sufficient evidence to establish continuous, unlawful 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)(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). To meet his or her burden

of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.

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 (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 entered before January 1, 1982, attempted to file Form I-687 between 1987 and 1988, and continuously resided in the United States for the requisite period.

The director's finding that the applicant is statutorily ineligible for legalization shall be withdrawn. The director adjudicated the Form I-687 application, thereby treating the applicant as a class member.

The record includes the following:

- Sixteen signed letters from friends and former neighbors and co-workers, all of which attest to the applicant's continuous residence in the United States during the requisite period. Two friends – [REDACTED] and [REDACTED] – stated that they knew of the applicant's arrival in the United States in 1981 but failed to specifically state how they could have known of that fact, i.e. whether they crossed the border together. Virtually all 16 people claim to have known the applicant since 1981 and have been good friends ever since. All of them also included a number of supporting documents to show they were living in the United States since at least 1981; however, none of them stated with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which he was residing during the critical time period between 1981 and 1985. Vague and ambiguous references to working together, going to English class, attending a party, or going to church with the applicant at some unidentified date in 1981 are not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each person claims to have a friendship with the applicant spanning 24 years. For these reasons, all of these letters from the applicant's friends

and former neighbors and co-workers have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

- A signed letter from [REDACTED], owner of McDonald's in Santa Clara. Mr. [REDACTED] stated that the applicant was an employee from 1981 to 1985, but due to a fire he could not produce physical records of the applicant's employment. This letter has little probative value, because it lacks the details necessary as prescribed by the regulations, namely, applicant's duties and address at the time of employment, exact period of employment, whether or not the information was taken from official company record, and where records are located and whether the Service may have access to the records. See 8 C.F.R. § 245a.2(d)(3)(i). It is not clear if all of the physical records are gone, how [REDACTED] still remembers the applicant especially after he left McDonald's in 1985.
- A notarized statement by [REDACTED] executed on May 23, 2006. Mr. [REDACTED] executed this statement because he had been called by the Service examiner to confirm and verify the applicant's claim. On the telephone, [REDACTED] said that the applicant had been working in the landscaping since he first entered the United States but could not remember when that time was and had no knowledge of the applicant's life in the United States. The notarized statement states that he could not answer the examiner's question because he was disoriented and had not slept well due to his mother being hospitalized. The notarized statement has little probative value because it fails to state with specificity how he dates his acquaintance with the applicant, whether he has direct, personal knowledge of the address at which the applicant was residing during the critical time period between 1981 and 1985.
- A photocopy of a check made to the applicant on May 6, 1980 for \$80.00 from [REDACTED] and a photocopy of a deposit slip from Bank of America dated July 10, 1980. In and of itself this evidence has no probative value. There is no other corroborating evidence such as bank statements to support the applicant's claim that he was in the United States in May or July 1980. Furthermore, the applicant's declaration states that he came to the United States in December 1980.
- Various receipts dated between 1981 and 1983 for the purchase of auto parts made by the applicant. Many of these receipts have no address of the applicant, and the names and dates of these receipts are very blurred. Therefore, it is hard to determine if these receipts were actually issued to the applicant between 1981 and 1983. Those that have the address of the applicant do not match with the address listed on the applicant's Form I-687.
- A photocopy of "Seller's Warranty and Buyer's Acknowledgement of Responsibility to Transfer Ownership" signed and dated on April 5, 1984. The year 1984 seems to have been altered, and therefore its probative value is nil.

- A personal signed declaration of the applicant executed on May 23, 2006. The declaration states that the applicant held multiple jobs from 1981 and 1985. He worked as a gardener, a laborer in the field, and a kitchen-helper/crew-member at McDonald's. The credibility of this latest declaration is questionable because in his previous two declarations he stated that he was doing construction work for 24 years.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In this proceeding, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and lack of specificities noted in the record, seriously detract 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 inconsistencies in the record and 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.