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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-131-10363

Office: LOS ANGELES

Date: NOV 12 2008

IN RE:

Applicant:

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. The decision is now before the Administrative Appeals Office 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. The director denied the application finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has lived in the United States since 1981, and that he was nervous and confused during his interview with immigration officers that resulted in his giving inaccurate dates when questioned. The applicant submits additional evidence on appeal.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be

accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

The applicant has the burden of proving by a preponderance of the evidence that he 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on February 8, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- Affidavits dated February 2, 2004 and May 29, 2004, and a declaration dated January 17, 2005, from [REDACTED]. In the first affidavit, the affiant stated that he has known the applicant since March of 1981 and that he met him as a neighbor when they both lived on [REDACTED] in North Hills, California. He further states that he and the applicant have maintained a good friendship since 1981, and that the applicant has baptized two of his children. In the second affidavit, which he wrote with [REDACTED] the affiants stated that they have known the applicant since 1980 and that they shared an apartment with the applicant at [REDACTED] in North Hills, California. In the third statement, [REDACTED] stated that he has known the applicant to have resided in the United States since 1979. He further stated that at that time, he was residing in Los Angeles, California. Here, the affiant's statements are inconsistent with one another and with what the applicant indicated on his Form I-687 application at part #30 where he stated that he resided on [REDACTED] in North Hills, California from 1978 to 1985. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period and doubt is cast on the assertions made. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of these discrepancies, these affidavits and statement can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated June 17, 2004 from [REDACTED] in which he stated that he and the applicant have lived in the same neighborhood since 1980 and that they keep in touch with each other. He also listed Van Nuys as the applicant's place of residence from 1980 to 2004. This statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he stated that he lived in North Hills, California from 1978 to 1983, Sepulveda, California from 1985 to 1998, and Van Nuys, California from 1998 to 2005. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made.
- A fill-in-the-blank affidavit dated June 17, 2004 from [REDACTED] in which he stated that he has known the applicant because they lived in the same building, worked

at the same place, and also lived in the same neighborhood. He listed Van Nuys as the applicant's place of residence from 1979 to 2004. Here, the affiant fails to indicate when and where he first met the applicant. It is also noted that this statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he indicated that he lived in the Van Nuys, California area from 1998 to 2005, not since 1979. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made.

- A fill-in-the-blank affidavit dated April 7, 2004 from [REDACTED] in which he stated that he is a friend of the applicant and that they both lived in the same building for a long time. He listed Los Angeles, California as the applicant's place of residence from 1980 to 2004. This statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he stated that he resided in North Hills, California from 1978 to 1985 and Sepulveda, California from 1985 to 1998. This statement is also inconsistent with attestations made by [REDACTED], and [REDACTED]. The inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that are inconsistent with what the applicant showed on his Form I-687, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated June 17, 2004 in which [REDACTED] stated that he has known the applicant since 1982 and that the applicant has gone to his shop for a hair cut for the last 10 years and before then when the affiant was working from his home. He listed North Hills/Sepulveda, California as the applicant's place of residence from 1982 to 2004. It is noted that the affidavit is inconsistent with the applicant's Form I-687 and with statements made by affiants [REDACTED] and [REDACTED], and [REDACTED]. Because the affidavit is inconsistent with statements made by other affiants, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated April 7, 2004 from [REDACTED] in which he stated that he met the applicant while he was working as a gardener and performing other side jobs. He indicated that the applicant resided in Van Nuys, California from April of 1982 to April of 2004. This statement is inconsistent with what the applicant indicated on his Form I-687 application in that he stated at part #30 that he resided in Van Nuys, California from 1998 to 2005, not since 1982. It is also noted that the affiant's statements are inconsistent with statements made by affiants [REDACTED], and [REDACTED]. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

- An affidavit dated June 16, 2004 from [REDACTED] in which he stated that he has been acquainted with the applicant since 1982 and that they have lived in the same neighborhood for 20 years. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she met the applicant in February of 1982 at a mutual friend's house. She also stated that they continue to visit their mutual friend and have themselves become good friends. Here, the affiant fails to specify the name of the mutual friend and the frequency with which she saw and communicated with the applicant during the requisite period. The affiant also fails to provide detail of the applicant's place of residence that would lend credence to her claimed knowledge of the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known and has worked with the applicant in 1980 and 1981. He further stated that he has established a relationship with the applicant for many years. Here, the affiant fails to specify whom they worked for or where they worked. He has also failed to specify the frequency with which he saw and communicated with the applicant during the requisite period.
- An affidavit dated February 9, 2004 from [REDACTED] in which she stated that she has known the applicant since January of 1979 when they were neighbors in the city of Sylmar, California. Here, the affiant fails to specify the applicant's address or the length of time that he lived in Sylmar, California. She also fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated May 29, 2004 from [REDACTED] in which he stated that he has known the applicant since 1984 and that they have established a relationship over the years. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because this affidavit is lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following affidavits:

- An affidavit dated June 16, 2004 from [REDACTED] in which he stated that he has known the applicant since 1982, and that they have maintained a close personal relationship which allows them to regularly see each other and meet with each other for social gatherings.
- An affidavit dated June 16, 2004 from [REDACTED] in which he stated that he has known the applicant since 1982.
- Affidavits dated August 8, 2005 from [REDACTED] and [REDACTED] in which they stated that they have known the applicant for 20 years and that he exhibits excellent work ethics.

Here, the affiants fail to indicate under what circumstances they met the applicant, the frequency with which they saw and communicated with the applicant, or any other detail that would lend credence to their claimed knowledge of the applicant's circumstances and the applicant's residence in the United States during the requisite period. Because the affidavits are lacking in detail, they can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the affidavits submitted by the applicant were insufficient to demonstrate his eligibility for temporary resident status.

On appeal, the applicant asserts that he is eligible for temporary resident status and that due to his nervousness he inadvertently gave wrong dates in response to the immigration officer's questions during his interview. The applicant submits the following evidence on appeal:

- An affidavit dated July 7, 2006 from [REDACTED] in which he states that he has known the applicant since 1981. Here, the affiant fails to indicate where he met the applicant and under what circumstances he met him. He also fails to specify the frequency with which he saw and communicated with the applicant or the applicant's place of residence during the requisite period. Because this affidavit is lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated July 7, 2006 from [REDACTED] in which he states that he has known the applicant since 1980 when they were neighbors in the [REDACTED] area of Van Nuys, California. He also states that they have developed a great friendship over the years. This statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he stated that he lived at [REDACTED] in North Hills, California from 1978 to 1985. The inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant

showed on his Form I-687, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he states that he has known the applicant since 1982, and at that time they were neighbors and have since become good friends. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period.
- An affidavit from [REDACTED] in which he states that he has known the applicant since 1980, and at that time they were neighbors and have since become good friends. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period.

In the instant case, for the reasons noted above, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial.

The contradictions noted above, and the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously detract 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 inconsistencies in the record and the applicant's reliance upon documents with minimum probative value, it is concluded that he has failed to establish by a preponderance of the evidence continuous residence 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.