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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-278-10620

Office: LOS ANGELES

Date: **NOV 26 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. 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 "John F. Grissom".

John F. Grissom, Acting 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 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He asserts that his son's birth certificate lists his address of residence as being in Mexico because officials would not allow him to provide his address in the United States. The applicant also submits additional evidence for consideration in support of his application.

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the

sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several declarations and affidavits, one marriage certificate and birth and death certificates. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits and declarations from [REDACTED] and [REDACTED]

Although declarants [REDACTED] and [REDACTED] state that they have known the applicant since before January 1, 1982, their statements do not supply enough details to lend credibility to an approximately 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant during the requisite period, or how they had personal knowledge of the applicant's presence in the United States. The declarants do not provide information regarding the applicant's city of residence during the requisite period. Further, it is noted that the declaration of [REDACTED] has been altered. Though the declaration states that [REDACTED] knows that the applicant has resided in the United States since prior to 1981, white-out appears over the last number of that year, casting doubt as to whether this was the original date indicated by the declarant. Given these deficiencies, these declarations have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

Declarants [REDACTED] and [REDACTED] state that they know that the applicant has resided in the United States since prior to 1984, 1985 and 1988 respectively. However, [REDACTED] and [REDACTED] do not provide details regarding how or where they first met the applicant or how they are able to date their initial meeting with the applicant. They do not state the frequency with which they saw the applicant in the United States during the requisite period or indicate whether there were periods of time during that period when they did not see the applicant. While [REDACTED] states that he first met the applicant in 1988 because he was friends with and then later married the applicant's daughter, he does not state that he knew the applicant before 1988. Therefore, his declaration pertains to only a very small portion of the requisite period. Because these affidavits are significantly lacking in detail, they can only be accorded minimal weight as evidence of the applicant's residence in the United States from 1984, 1985 and 1988 respectively.

Affiants [REDACTED] and [REDACTED] state that they have known the applicant for approximately 27 and 25 years respectively. [REDACTED] states that the applicant worked with her husband for many years and attests to his moral character. Affiant [REDACTED] states that he has been friends with the applicant for many years and speaks of his moral character. However, the affiants do not state when or where they first met the applicant or whether they first met him in the United States. Neither states whether they know if the applicant resided in the United States during the requisite period. Therefore, these affidavits carry no weight as evidence that he did so.

The applicant also submitted two declaration from himself, the first of which is dated June 2005 and the second of which is dated March 2007 and was submitted on appeal. In his 2005 declaration, he states that he first entered the United States prior to 1981 and that he has worked cutting lawn and doing construction work since that time and until 1992. He states that he later went to work for Northgate Market, Inc.

The record also contains the applicant's Form I-687 application and notes taken from the Citizenship and Immigration Services (CIS) officer who interviewed the applicant regarding that application. The

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<sup>1</sup> Both declarations indicate they were signed in June 2005.

applicant stated that he was not absent during the requisite period and that his employment for the duration of the requisite period was for [REDACTED] doing construction work.

At his interview regarding his Form I-687 application, the applicant stated that he was married three times, twice in Mexico and once in the United States. He also stated that he had five children, all of whom were born in Mexico. He further stated that he left the United States twice during the requisite period, once in 1986 for 15 days when his mother was ill and then again for three weeks in 1987 when his son was born.

In the applicant's previously noted March 2007 declaration, he also states that he had two absences from the United States during the requisite period, once in 1986 because his mother was sick and once in 1987 when his son was born. Contrary to the testimony the applicant provided at the time of his interview, the applicant asserts in this declaration that he has been married only two times and states that he is submitting both his marriage and his divorce certificates with his appeal. However, though the applicant stated that he was submitting his marriage and his divorce certificates with his appeal, the only official documents submitted with this declaration were a death certificate that states that [REDACTED] passed away in 2000 and a marriage certificate that indicates that [REDACTED] and [REDACTED] married in 1997. As the applicant has not provided details regarding how or if these documents pertain to the applicant, they are not relevant evidence for this proceeding.

A previously submitted marriage certificate in the record indicates that the applicant's marriage in the United States occurred in 1999. Though the applicant indicated that he was married twice in Mexico during his interview regarding his Form I-687 application and though he indicated in his March 2007 declaration that he was only married once in Mexico and that he was submitting his marriage and divorce documents with his appeal, these documents are not in the record. Therefore, the AAO cannot determine when these events occurred or whether they occurred during the requisite period.

The applicant's son's birth registration indicates that his son, [REDACTED] was born on August 31, 1987 and that his birth was registered on September 7, 1987. This certificate indicates that the applicant's father was present at his son's birth registration and that the applicant resided in Mexico at the time of that registration. Though the applicant stated during his interview that he had five children, all of whom were born in Mexico, no other birth certificates appear in the record. Therefore, the AAO cannot determine whether these births occurred during the requisite period or whether the applicant was present at or absent from their births or birth registrations.

Though the applicant has claimed that he first entered the United States in 1981 and has submitted declarations from two individuals attesting to his presence in the United States prior to January 1, 1982, as was previously noted, the declarations do not carry sufficient weight to establish that he did so.

Further, the applicant has not been consistent when stating the number of times he was married in Mexico. He has also not submitted documents establishing the dates of his marriages in Mexico or a document stating when he was divorced from his former wife in Mexico, whether he was present for this divorce or whether the divorce occurred during the requisite period.

Though the applicant has stated at the time of his interview that he has five children, all of whom were born in Mexico, he has only submitted a birth registration certificate for one child. Therefore, it is not clear when the applicant's remaining four children were born or whether he was present at either their births or their birth registrations.

Because of the paucity of the evidence in this case, the applicant has failed to satisfy his burden of proving that he resided continuously in the United States for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.