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

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LI

FILE:

MSC 06 101 24744

Office: LOS ANGELES

Date:

OCT 10 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 be "R. 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 Director, Los Angeles. The matter 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 (the 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 during the requisite period. On appeal, the applicant reiterated his claim of eligibility and provided additional evidence.

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 Immigration and Nationality Act (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 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 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.

On the Form I-687 application, which the applicant signed on December 29, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that he lived at [REDACTED] in North Hollywood, California from February 1981 to 1998.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from February 1981 to February 1989 as a self-employed laborer.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he visited his family in Mexico from August 18, 1987 to September 24, 1987. The applicant listed no other absences from the United States.

The pertinent evidence in the record is described below.

The record contains a form affidavit, dated April 2, 1990, from [REDACTED] of [REDACTED] in North Hollywood, California. This office notes that is the address at which the applicant claims to have lived from 1981 to 1988. The affiant stated that the applicant visited Mexico from October 24, 1987 to November 27, 1987.

- The record contains an affidavit, dated October 11, 2006, from [REDACTED] who did not provide his address, thus rendering the information in the affidavit less verifiable. Mr. [REDACTED] stated that he has known the applicant since 1981, but did not indicate whether the applicant had ever lived in the United States.

- The record contains an affidavit, dated October 11, 2006, from [REDACTED] who did not provide his address. Mr. [REDACTED] stated that he has known the applicant since 1983, and that he is a loyal employee and a hard worker, but did not indicate whether the applicant had ever lived in the United States.
- The record contains an affidavit, dated October 11, 2006, from [REDACTED] of [REDACTED] in Palmdale, California. This office notes that [REDACTED] is the address at which the applicant claims to have lived from 1998 to the present time. Mr. [REDACTED] stated that he met the applicant 25 years before in North Hollywood, California, and that when the applicant wished to move to Palmdale he began renting the applicant a room. Mr. [REDACTED] did not indicate whether the applicant lived continuously in the United States during the requisite period or how often he saw the applicant during the requisite period. Although the affidavit implies that the applicant has lived in the United States, it lacks detail.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the application, the applicant submitted the affidavit of [REDACTED]. In the Notice of Decision, dated October 17, 2006, the director denied the application based on the applicant's failure to submit evidence sufficient to demonstrate his continuous residence in the United States during the requisite period.

On appeal, the applicant reiterated his claim of continuous residence in the United States during the requisite period and stated that he was confused at his interview. With the appeal, the applicant submitted the affidavits of [REDACTED] and [REDACTED].

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

This office notes that the dates [REDACTED] provided for the applicant's visit to Mexico are not the dates during which the applicant stated that he visited Mexico. This conflict weakens the evidentiary value of the affidavit and the credibility of the applicant's assertions. Further, that affidavit does not assert, or even imply, that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States during the requisite period. As such it provides no support for those propositions

The affidavits of [REDACTED]s and [REDACTED] do not state that the applicant entered the United States prior to January 1, 1982 or that he resided continuously in the United States during the requisite period. As such, they provide no support for that proposition.

The affidavit of [REDACTED] implies, but does not state, that the applicant has resided in the United States throughout the past 25 years. It is so lacking in salient detail, however, that it adds

little support to the applicant's claim of continuous residence in the United States during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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