U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L1

FILE: [redacted] Office: LOS ANGELES Date: OCT 1 5 2008
MSC 06 101 30415

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.

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, 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 January 9, 2006. The applicant was interviewed on November 27, 2006 in connection with his Form I-687. On December 2, 2006 the director denied the application.

On the Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, the applicant acknowledged receipt of the denial decision on the Form I-687 application but indicated his belief that the Form I-687 was previously approved. In support of this belief, the applicant submitted a December 5, 2006 letter signed by the director stating that Citizenship and Immigration Service (CIS) records showed that the applicant's Form I-687 was approved on December 2, 2006. On July 23, 2008, the AAO issued a Notice of Intent to Deny (NOID) the Form I-687 application. The AAO explained that the director's December 5, 2006 letter was incorrect and that CIS records showed that the Form I-687 had been denied. The AAO detailed the information in the record and listed the reasons the information was found not probative in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous residence for the applicable time period. The AAO also attached a copy of the director's December 2, 2006 denial decision. The AAO afforded the applicant 30 days to submit a response to overcome the reasons for denial set out in the NOID. As of this date, the applicant has not submitted a response.

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.

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. CIS considers only those documents relevant to the requisite time period.

On the Form I-687, the applicant listed his last entry into the United States as November 1981 at Calexico without a visa. In the space provided on the Form I-687 to list addresses, the applicant indicated his addresses during the pertinent time period as: [redacted], Los Angeles, California from November 1981 to January 1985; and [redacted], Los Angeles, California from January 1985 to April 1990. The applicant listed one absence in October 1987 to visit your family in Mexico. The applicant listed his places of employment during the pertinent time period as: self-employed as a mechanic from November 1981 to January 1985; and as a mechanic/driver for Bonos Delivery from January 1985 to March 1990. The applicant indicated that he was born October 31, 1963 and thus would have been 18 years old when he claimed to have entered the United States in November 1981.

The record also includes the applicant's December 31, 2005 declaration, wherein the applicant declared: that he had entered the United States for the first time in 1981 without inspection; and that he had traveled to Mexico in October 1987 to see his family. At the applicant's November 27, 2006 interview with a CIS

officer, the applicant stated: that he had first entered the United States in September 1981 without inspection at Calexico; that he had lived in San Pedro for four years and then moved to Los Angeles where he had lived for eight years; and that he had departed the United States to Mexico five times. The applicant indicated that he had departed the United States in: December 1985 to get married and had stayed for 15 days; August 1986 to "see baby" and had stayed for 15 days; October 1987 because he was homesick and had stayed for 15 days; April 1988 to visit and had stayed for 15 days; and again in 1989. The CIS officer does not indicate the length of time or reason for the applicant's last exit from the United States.

The record further includes the following affidavits:

- An affidavit dated December 29, 2005 signed by who declares that he has known the applicant since September 1981 when the applicant lived with him at in Los Angeles, California and that since that time he and the applicant meet at family reunions.
- A December 26, 1990 form affidavit signed by , residing at Los Angeles, California, who declares that the applicant lived in Los Angeles, California from November 1981 to the date she signed the affidavit in December 1990; and that she met the applicant when he came to live in the building she managed.
- An April 24, 2006 affidavit signed by who declares that he has known the applicant since September 1981 when the applicant lived with him at in Los Angeles, California and that he has continued to interact with the applicant and his family during family reunions and other less formal events.
- An April 24, 2006 affidavit signed by who declares that she has known the applicant since September 1981 when the applicant lived with her at in Los Angeles, California and that she continues to meet the applicant during information and formal family gatherings.
- An April 17, 2006 affidavit signed by , the applicant's sister, who declares that the applicant has lived in the United States since 1981 and that when he first arrived in the United States lived with her at in Los Angeles, California.
- An April 17, 2006 affidavit signed by , the applicant's brother-in-law who declares that he met the applicant in 1981 when the applicant lived with his sister at in Los Angeles, California.
- An April 16, 2006 form affidavit signed by who declares that she has personal knowledge that the applicant lived in South Central Los Angeles from June 1981 to March 1993 and that she met the applicant through the applicant's wife when the applicant's wife introduced the applicant to her.

As indicated in the NOID, the AAO does not find these affidavits probative. The affidavits are general and do not provide the detail necessary to ascertain their validity. The affidavits reviewed do not contain

sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the document originators and their subsequent interaction to establish the applicant's residence during the requisite time period. The statements reflect a lack of concrete and specific details. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions. In addition, the affidavit of [redacted] is inconsistent with the applicant's testimony that he first entered the United States in September 1981 and that his wife first entered the United States in 1990. As noted above, Ms. [redacted] states that she had personal knowledge that the applicant lived in the United States in June 1981 and that she knew this because she had met the applicant through the applicant's wife.

The AAO also reviewed a December 7, 1990 affidavit signed by an individual with an illegible signature who declares that he had been acquainted with the applicant since June 1985 because the applicant worked part-time and full-time for him as a mechanic. This individual does not identify his business, if any, and fails to identify his relationship to the owners of the establishment. This individual's statement is not on employer letterhead and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which requires that the affiant declare that the information was taken from company records, identify the location of such company records, and state whether such records are accessible or in the alternative state the reason why such records are unavailable. For these reasons, the AAO does not find this affidavit probative.

The record also contains photocopies of postal receipts bearing postmarks of February 2, 1988, February 10, 1988, and March 7, 1988. The AAO observes that the evidentiary rule at 8 C.F.R. § 245a.2(d)(6) provides: "[i]n judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." As this record only contains photocopies of these receipts, the AAO is unable to ascertain the validity of these documents. Moreover, even if the validity of the postal receipts would be established, the postal receipts have limited probative value as they are dated in 1988; thus are not evidence of the applicant's entry into the United States or residence prior to 1988.

The AAO has also reviewed the photographs of the applicant in various locations. Although a few of the photographs contain identifiable United States' landmarks in the background, the photographs do not contain dates and do not include any other information to establish the time frame the photographs were taken or otherwise demonstrate that the applicant resided in the United States for the requisite time period.

The AAO has further reviewed the Form I-130, Petition for Alien Relative, in the record. The Form I-130 provides further inconsistencies with the applicant's testimony. The petitioner, applicant's brother indicated on the Form I-130 that the applicant entered the United States in 1982 on a visitor visa. This information conflicts with information provided on the applicant's Form I-687 and with the applicant's oral testimony, that he entered the United States in September 1981 without a visa. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The above deficient affidavits, postal receipts, 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 absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 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*.

An alien applying to adjust status pursuant to Section 245A of the Act 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 applicant has failed to meet this burden.

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.