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[REDACTED]

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FILE:

[REDACTED]

Office: FRESNO

Date:

SEP 13 2007

MSC 05 166 11715

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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, Fresno, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel submits a brief disputing the director's findings. Counsel asserts that the applicant has submitted sufficient credible testimony that meets the standards set by precedent case law.

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 (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.

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 resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. In an attempt to satisfy his burden of proof, the applicant submitted the following three affidavits, all dated February 10, 1990:

1. An affidavit from [REDACTED] claiming to have personally known of the applicant's residence in the United States from July 13, 1990 through the date of the affidavit.¹ The affiant added that he has known the applicant since 1981 and that the applicant has resided at [REDACTED]
2. Two identical affidavits—one affidavit is from [REDACTED] and the other from [REDACTED]. Both affiants stated that they had known the applicant since July 13, 1981 and provided the applicant's residential address as of the date the affidavit was signed.

A review of the information provided in the above affidavits indicates that affiants did not provide sufficient verifiable information regarding the applicant's purported residence during the requisite time period. For example, none of the affiants discussed how they came to know the applicant, the applicant's employment history in the United States, or even the frequency of their respective associations with the applicant.

¹ Based on the date the affidavit was written, February 10, 1990, the affiant appears to have made a typographical error in claiming to have known the applicant since July 13, 1990, a date which had not yet taken place at the time the affidavit was written. While the AAO will not make an adverse finding regarding the credibility of the affidavit based on this typographical error, the date of the applicant's first acquaintance with the affiant remains in question.

The applicant subsequently filed an application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. In support of his application, the applicant submitted two affidavits. The first affidavit is from [REDACTED] and is dated June 18, 2001. [REDACTED] claimed to have known the applicant from July 1981 to June 1990. The affiant claimed to have personal knowledge of the applicant and stated that he met with the applicant on a regular basis. Although the affiant stated that the applicant resided in Selma, California from 1981 to 1990, he did not provide the applicant's exact address. The other affidavit, dated June 20, 2001, was from [REDACTED] and contained information identical to that contained in [REDACTED] affidavit. Neither affiant provided any verifiable information, which may be used to corroborate the applicant's claim regarding his unlawful residence during the statutorily relevant time period.

Lastly, with regard to the applicant's most recently filed application for temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements, the applicant provided the following three witness affidavits and three sworn declarations given by the same affiants before a representative of the U.S. Department of Homeland Security:

1. A witness affidavit from [REDACTED] dated August 20, 2005 in which the affiant stated that he met the applicant on December 25, 1981 at a Christmas party given at his house. He stated that he and the applicant became good friends. He stated that he and the applicant get together at the affiant's house and claimed that they keep in touch by phone.
2. A Record of Sworn Statement given by [REDACTED] on April 28, 2006. [REDACTED] stated that he has known the applicant since 1981 and further claimed that he sees the applicant two to three times per year. He stated that the applicant visited him two to three times every year over the last six years since [REDACTED] became ill. [REDACTED] was unable to provide any information regarding the applicant's family.
3. A witness affidavit from [REDACTED] dated August 21, 2005 in which the affiant stated that he first met the applicant at a friend's on December 25, 1981. Although the affiant stated that he worked with the applicant at various farms between 1981 and May 4, 1988, he did not specify the names of any of the farms where the two purportedly worked together. The affiant also stated that he met the applicant on Sundays at an Indian church in Caruthers, California and claimed to have been in touch with the applicant by phone.
4. A Record of Sworn Statement given by [REDACTED] on April 28, 2006. [REDACTED] stated that he met the applicant at a Christmas party on December 25, 1981. He claimed that the applicant has visited him at his home "two or three times" and further stated that he has seen the applicant at an Indian church, which both the applicant and the affiant have purportedly attended for 16 years, and at the grocery store. [REDACTED] stated that he did not know whether the applicant is married or whether he has any children.

5. A witness affidavit from [REDACTED] dated August 20, 2005 in which the affiant stated that he met the applicant in August 1981. He stated that he and the applicant worked together at various, but did not provide the names of any farms. The affiant also stated that he and the applicant get together "once [in a] while" on Sundays.
6. A Record of Sworn Statement given by [REDACTED] on April 28, 2006. [REDACTED] stated that he met the applicant in August 1981 at a grocery store whose name he provided. [REDACTED] also stated that he and the applicant worked on the same farms during the winter of 1981. He did not, however, provide the names of any of the farms.

In a decision dated August 22, 2006, the director denied the petition, concluding that the information provided by the applicant in support of his claimed residence in the United States is not relevant, probative, and credible. More specifically, the director found that the additional evidence the applicant submitted during his August 26, 2005 interview contradicted his prior claims in which he stated that he was unable to produce further evidence establishing his residence in the United States during the relevant time period. The director concluded that the applicant failed to provide sufficient, credible evidence to corroborate his claim and denied the application.

While the AAO concurs with the director's overall conclusion with regard to the applicant's failure to establish eligibility for temporary resident status, the underlying analysis that served as the basis for this conclusion was flawed. The mere fact that the applicant provided additional evidence after claiming that he would be unable to do so is noteworthy, but cannot be used as the sole basis to discredit the applicant's claim and the attestations of the affiants. Rather, it is the contents of the documentation submitted that must be thoroughly addressed. In the present matter, none of the statements made under oath or in the sworn affidavits are sufficient in corroborating the applicant's claimed unlawful residence in the United States. Specifically, all three affiants of the most recent affidavits claim to have known the applicant since 1981 and indicate that they knew of the applicant's alleged farm labor in some capacity. However, none of the affiants provided the name of any of the farms where the applicant purportedly worked. The AAO notes that [REDACTED] provides the most information about the applicant, including his current address and phone number, the approximate areas where the applicant's farm labor purportedly took place, the name of the applicant's spouse, and the gender of the applicant's children. However, the affiant did not provide verifiable information to corroborate the applicant's claimed residence during the statutorily relevant time period. Despite the affiant's assertion that he and the applicant worked together at various farms, this information cannot be verified, as the names of the farms where such work may have taken place have not been provided.

The attestations of the two remaining affiants have even less probative value, as they include almost no verifiable facts. While [REDACTED] claims to have known the applicant since December of 1981, he knows no information about the applicant's spouse or children and does not even know if the applicant is married. Thus, while the affiant claims that the applicant is his friend, his lack of such basic knowledge about the applicant's personal life suggests that his interactions with the applicant are minimal at best. Additionally, the affiant's claim that he met the applicant at the grocery store and church is not accompanied by any details as to the frequency and nature of their interactions.

With regard to the attestations of [REDACTED] the only statement offered with regard to the applicant's residence in the United States since prior to January 1, 1982 is the initial meeting between the affiant and the applicant, which purportedly took place in December of 1981. Much like [REDACTED] was unable to provide any information about the applicant's personal life, thereby making his relationship with the applicant seem tenuous at best, regardless of his claim that he and the applicant are good friends. It is unclear how the affiant can claim to be good friends with the applicant and yet offer no information about the applicant's family. This apparent inconsistency renders the affiant's credibility questionable, thereby precluding the AAO from relying on his testimony in establishing the applicant's eligibility for temporary resident status.

On appeal, counsel asserts that the three witness affidavits and their respective sworn testimonies must be given full evidentiary weight and that a finding favorable to the beneficiary must be made. However, as thoroughly discussed above, neither the affidavits nor the sworn statements offer sufficient verifiable evidence regarding the applicant's residence in the United States during the time period in question. Thus, even though the AAO makes no adverse finding based on the applicant's submission of further evidence after claiming that no further evidence was available, the evidence, when thoroughly assessed, does not offer the requisite facts upon which to base a favorable finding.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period and has submitted deficient non-contemporaneous evidence to attest to his residence during that time period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has 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*. 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.