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

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FILE: [redacted] Office: LAS VEGAS Date: MAY 03 2007

MSC 05 034 10033

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. [redacted] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. [redacted] C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The district 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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, the applicant asserts that he told the interviewing officer that he entered the United States in January 1982, not May 1982 as stated in the denial decision.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 3, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he lived at an unspecified address in Palmdale, California, from 1982 to 1990. At block #33, where applicant are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked for [redacted] doing gardening work in Sun Valley, California, from 1982 to 1984 and for [redacted] of Las Vegas, Nevada, doing gardening work from 1984 to 1990.

The applicant appeared at the Las Vegas, Nevada, CIS office for his legalization interview on August 25, 2005. The notes of the interviewing officer indicate that the applicant stated under oath during his legalization interview that he first entered the United States in May 1982.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated January 19, 2004, from [redacted] owner of a

lawn maintenance business in Sun Valley, California, stating that he met the applicant in 1982 when he was completing a gardening job near the applicant's place of residence at [redacted] Los Angeles, California, when the applicant approached him and asked for work. Mr. [redacted] stated that the applicant worked for him on an hourly cash basis whenever he needed extra help. A CIS officer contacted Mrs. [redacted] on August 25, 2005. Ms [redacted] informed the officer that Mr. [redacted] started his lawn maintenance business in 1983 and that Mr. [redacted] did not know the applicant.

The applicant also submitted an affidavit dated January 20, 2004, from [redacted] stating that he has known the applicant since 1984 when the applicant came to his home regularly to work for him as a gardener. It is noted that Mr. [redacted] who is a notary public, notarized his own statement. Mr. [redacted] did not provide any specific verifiable information such as the applicant's address(es) during the period from 1984 to May 4, 1988, the expiration date of the initial application period for legalization under section 245a of the Act. Furthermore, Mr. [redacted] statement that the applicant did gardening work for him at his home in Las Vegas, Nevada, contradicts the applicant's statement under penalty of perjury on the Form I-687 that he lived in Palmdale, California, from 1982 to 1990.

The applicant submitted an affidavit dated January 20, 2004, from [redacted] of Las Vegas, Nevada, stating that he met the applicant in 1986 and they have been friends since that time. Mr. [redacted] did not provide any specific verifiable information such as the applicant's address(es) during the period of their acquaintance. Furthermore, Mr. [redacted] statement that he met the applicant in Las Vegas in 1986 contradicts the applicant's statement on the Form I-687 that he lived in Palmdale, California, from 1982 to 1990. Moreover, a CIS officer attempted to contact Mr. [redacted] on August 25, 2005, but the contact number listed by Mr [redacted] on his affidavit is a fax number and not a home phone number.

The applicant provided affidavits dated January 25, 1990, from [redacted] and [redacted] each of whom states that the applicant lived in Hawthorne, Nevada, from October 1986 to January 1987, in Las Vegas, Nevada, from September 1987 to January 1989, in Las Vegas, Nevada from January 1987 to October 1987, and in Palmdale, California, from January 1989 to January 1990. Neither [redacted] nor [redacted] has not provided any specific verifiable information such as the street address(es) where the applicant resided during the period of their acquaintance. Furthermore, the statements o[redacted] and [redacted] contradict the applicant's statement on the Form I-687 under penalty of perjury that he lived in Palmdale, California, from 1982 to 1990.

Finally, the applicant provided an affidavit dated January 29, 2004, from [redacted], a resident of Las Vegas, Nevada, stating that she met the applicant in Los Angeles, California, through friends when she was in California visiting her mother. Ms. [redacted] further stated that the applicant moved to Las Vegas in 1985 and stayed with her and her family at [redacted] Las Vegas, Nevada," until the end of 1988, at which time he moved to Pandales [sic], California. Ms. [redacted] indicated that the applicant subsequently moved back to Las Vegas in 1990, and she has been in contact with him ever since. Ms. [redacted] statement that the applicant moved to Las Vegas in 1985 and lived in her home contradicts the applicant's statement under penalty of perjury on the Form I-

687 that he lived in Palmdale, California, from 1982 to 1990. It is noted that a CIS officer attempted to contact Ms. [redacted] on August 25, 2005, to verify the information in her affidavit. The officer called the phone number listed on her affidavit, [redacted], but that phone number was not in service.

The applicant has not provided any explanation for these discrepancies in his claimed places and dates of residence in the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The district director noted that the applicant stated several times under oath that he first entered the United States in May 1982 and denied the application on August 25, 2005, because the applicant failed to establish entry into the United States prior to January 1, 1982, and continuous residence in the United States from that date to May 4, 1988.

On appeal, the applicant claims that he told the interviewing officer during his legalization interview that he first entered the United States in January 1982, not in May 1982.

The applicant's statement on appeal that he first entered the United States in January 1982 contradicts the statement of the interviewing officer that the applicant stated several times under oath during his legalization interview that that he didn't enter the United States until May 1982. Furthermore, even if the applicant's claim on appeal that he first entered the United States in January 1982 were true, it would render him ineligible for temporary resident status. In order to establish eligibility for temporary resident status, the applicant must establish entry into the United States *prior to January 1, 1982* and continuous residence in the United States from that date to May 4, 1988. The applicant, in this proceeding, has not provided any evidence to establish, continuous residence in the United States prior to January 1, 1982.[1]

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[1] It is noted that the applicant filed a previous application for class membership in *Catholic Social Services v. INS*, (CSS), on May 15, 1990. The applicant claimed on the Form I-687 he submitted to support his claim of class membership that he first entered the United States in May 1981. However, the applicant was not granted class membership at that time because [redacted] the person who prepared his application on behalf of [redacted] was subsequently convicted on September 12, 1991, of conspiracy in violation of 18 U.S.C. § 371 and creating or supplying fraudulent documents in violation of 8 U.S.C. 1255(a). Trial testimony established at that time that [redacted] was responsible for the filing of fraudulent legalization, special agricultural worker (SAW), and class membership applications on behalf of [redacted]. On May 8, 1995, [redacted] was convicted of aiding and abetting in violation of 18 U.S.C. § 2, conspiracy in violation of 18 U.S.C. § 371, and false statements in violation of 18 U.S.C. § 1001. Trial testimony at that time established that [redacted] was responsible for the filing of fraudulent legalization , SAW, and class membership applications. The applicant signed that Form I-687 on March 20, 1990, certifying under penalty of perjury that the information provided on the application was true and correct to the best

The numerous contradictions noted above, as well as the absence of sufficiently detailed supporting documentation that provides specific verifiable information to corroborate the applicant's claim of continuous residence during the requisite period, seriously detract 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to credibly establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. 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.

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of his knowledge. Although the information on that Form I-687 concerning the applicant's dates of initial entry into the United States and dates and places of residence in the United States from that date to May 4, 1988 contradicts the information on the current Form I-687, that application, and its supporting documentation, cannot be accepted as credible and will not be addressed in this decision.