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: AUG 25 2008

MSC-06-084-10116

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. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that the applicant indicated on a previously filed Application for Asylum (Form I-589), Biographic Information (Form G-325A) and Application for Cancellation of Removal (Form EOIR-42B), the applicant indicated that she first the United States in 1991.

The applicant has submitted a written statement in support of her appeal but has not submitted 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 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) 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. *See* 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).

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.* at 80. 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 or petitioner 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 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 for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the first period of residence the applicant listed began in 1990. At part #33 of the Form I-687 where applicants were asked to list all previous employment in the United States since January 1, 1982, the first period of employment listed by the applicant began in 1992.

The applicant initially submitted two affidavits in support of his application. As noted by the director, these affidavits did not refer to the applicant's residence in the United States during the requisite period and thus are not probative as to the applicant's claim of continuous residence. On appeal, the applicant has provided six additional affidavits. Each affiant has listed his or her address and included a copy an identification card. **Each affiant provides the applicant's** addresses throughout the requisite period: [redacted] Calexico, CA from 1981 until February 13, 1984, and [redacted] Calexico, CA. from February 15, 1984 until August 15, 1988. As noted above, the applicant only listed his addresses since 1990 on his I-687 application. Thus, the information provided in the affidavits cannot be compared against the information provided by the applicant in his I-687 application. However, in 1995, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On that application the applicant listed his address as [redacted], Pomona, CA from "1987 – Present." Thus, the address provided in the affidavits is inconsistent with the address provided by the applicant in his previous application for asylum. **This is a material inconsistency which diminishes the** credibility of the affidavits.

Further, all of the affidavits are significantly lacking in relevant detail. Each affidavit contains only a sentence or two regarding the affiant's relationship with the applicant. For example, the affidavit of [redacted] simply states "I know [redacted] and his father

[redacted], I remember them when they were living in Calexico CA in the dates named above if you have any questions please call me at the above phone." This affidavit fails to state with any specificity where or how the affiant first met the applicant, how he dates his acquaintance with the applicant, or the nature and frequency of their contact throughout the requisite period. All of the other affidavits are similarly lacking in detail. For this reason, all of these affidavits have limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

There is substantial evidence in the record that contradicts the applicant's claims of residence in the United States during the requisite period. Specifically, the applicant testified under oath before an immigration officer in 1995 that he first entered the United States in May of 1987. In addition, in Part E of the asylum application filed in 1995, the applicant indicated that he was a student at Junior High Santa Maria in Tunancingo Coutepec, Mexico from 1981 to 1983. This detracts from the credibility of the applicant's claim that he has resided in the United States since 1981.

Further, on the asylum application the applicant listed his address as [redacted]., Pomona, CA from "1987 – Present." The asylum application was filed in August 1995, thus the applicant indicated that he lived at [redacted]. from 1987 at least until August 1995. This differs significantly with the information provided by the applicant on his I-687 application, where he listed his address as [redacted], Pomona, CA only for the period 1990 through 1992. As noted above, the information on the asylum application also conflicts with the affidavits submitted by the applicant in which all of the affiant's list his address as [redacted], Calexico, CA from February 15, 1984 until August 15, 1988.

On appeal, the applicant attempts to address the discrepancies raised by his previous asylum application. The applicant states that he did not know that his attorney filed the application and that the attorney put incorrect information on the application. However, the applicant signed the application and, in doing so, certified that the information contained in the application was true and correct. Further, the applicant appeared for an asylum interview in September of 1995 and testified before an immigration officer that he first entered the United States in 1987. The applicant has failed to explain why he testified that he entered the United States in 1987 if this was not, in fact, correct. This casts doubt on the applicant's claim to have resided in the United States throughout the requisite period, and tends to show he entered the United States for the first time in 1987.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite 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 contradictory statements on his applications and his 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 for the requisite period 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.