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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI Date: DEC 17 2008

MSC 06 047 18689

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. 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.

John F. Grissom, Acting 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, Miami. The matter was appealed to the Administrative Appeals Office (AAO). By decision dated September 18, 2008, the AAO rejected the applicant's appeal as untimely filed. Specifically, the record indicated that the appeal was filed on January 30, 2007, 34 days after the director issued her decision on December 27, 2006. The appeal was, therefore, deemed untimely. Subsequent to the AAO's rejection of the appeal, counsel submitted documentation which establishes that the appeal was received by United States Citizenship and Immigration Services (USCIS) on January 29, 2007, not January 30, 2007 as noted by the AAO in its decision rejecting the appeal. The appeal was, therefore, timely filed. The AAO reopens these proceedings *sua sponte* to render a decision on the merits of the applicant's 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel submits a brief stating that the applicant has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* 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 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, 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 submitted the following documentary evidence:

Witness Statements

- [redacted] provided a witness statement wherein he stated that the applicant was in Mexico during the months of March and April in 1988 to visit his father who had undergone prostate surgery.

- [redacted] provided a witness statement wherein he stated that the applicant was in Mexico during the months of March and April in 1988 to visit his father who had undergone prostate surgery.

- [redacted] submitted two sworn statements on behalf of the applicant. stated that he has personal knowledge that the applicant, his brother, has been in the United States from "January of 1981 to the [p]resent" (May 14, 2005). The witness further stated the following: the applicant entered the United States in January of 1981 from Mexico; from January of 1981 to July of 1985, the applicant lived with [redacted] at [redacted], Immokalee, FL; in August of 1985 the applicant moved into [redacted] residence at the [redacted] in La Belle, FL, where he continued to reside until November of 1991; the applicant has continuously resided in the United States from January of 1981 until the date of the witness statement, except for a single trip to Mexico in 1988, departing in March and returning in April; and the applicant has not left the United States since April of 1988.

- [redacted] submitted a sworn statement on behalf of the applicant. [redacted]s stated that he has personal knowledge that the applicant, his brother, has been in the United States from "January of 1981 to the [p]resent" (May 14, 2005). The witness further stated the following: the applicant entered the United States in January of 1981 from Mexico; from January of 1981 to July of 1985, the applicant lived with [redacted] at [redacted] Immokalee, FL; in August of 1985 the applicant moved into [redacted] residence at the [redacted] in La Belle, FL, where he continued to reside until November of 1991; the applicant has continuously resided in the United States from January of 1981 until the date of the witness statement, except for a single trip to Mexico in 1988, departing in March and returning in April; and the applicant has not left the United States since April of 1988.

- [redacted] submitted two sworn statements on behalf of the applicant. [redacted]s stated that he has personal knowledge that the applicant, his brother, has been in the United States from "January of 1981 to the [p]resent" (May 14, 2005). The witness further stated the following: the applicant entered the United States in January of 1981 from Mexico; from January of 1981 to July of 1985, the applicant lived with [redacted] at [redacted], Immokalee, FL; in August of 1985 the applicant moved into [redacted] residence at the [redacted] in La Belle, FL, where he continued to reside until November of 1991; the applicant has continuously resided in the United States from January of 1981 until the date of the witness statement, except for a single trip to Mexico in 1988, departing in March and returning in April; and the applicant has not left the United States since April of 1988.

- [redacted] submitted a sworn statement on behalf of the applicant wherein he stated that he has known the applicant from August of 1985 until the date of the witness statement (May 14, 2005). [redacted] stated that the applicant rented a trailer from him from August of 1985 to November of 1991 where he lived with his brothers [redacted] and

[redacted]. The witness stated that he has personal knowledge of the applicant's physical presence in La Belle, FL during this time frame because he lived in the same trailer park and had frequent contact with the applicant. [redacted] **further stated that his mother** [redacted] collected rent from the applicant and his brothers during that time frame.

- [redacted] submitted a sworn statement on behalf of the applicant wherein she stated that she has known the applicant from August of 1985 until the date of her statement (May 14, 2005). [redacted] stated that the applicant rented a trailer owned by her son from August of 1985 to November of 1991 where he lived with his brothers [redacted] **and** [redacted] The witness stated that she has personal knowledge of the applicant's physical presence in La Belle, FL during this time frame because she collected rent from the applicant and his brothers.

- [redacted] submitted a sworn statement on behalf of the applicant wherein he stated that he has known the applicant from January of 1981 to the date of his statement (May 14, 2005). [redacted] **stated that the applicant lived with** [redacted] **at** [redacted] **Immokalee, FL from January of 1981 until July of 1985.** [redacted] stated that the applicant worked with [redacted] harvesting vegetables and fruits and that he has knowledge of this because he worked in the same industry in the same town and had frequent contact with the applicant. The witness stated that after 1985 he moved to La Belle, FL where the applicant lived, and the two maintained continuous contact.

- submitted a sworn statement on behalf of the applicant wherein he stated that he has known the applicant from January of 1981 to the date of his statement (May 14, 2005). stated that the applicant lived with [redacted] at [redacted], Immokalee, FL from January of 1981 until July of 1985. The witness stated that from March of 1982 until July of 1985 the applicant worked with [redacted] harvesting fruits and vegetables and that he has knowledge of this fact because he to worked with the applicant and became close friends with him. [redacted] stated that he became closer friends with the applicant when the applicant moved to La Belle, FL in August of 1985. Finally, the witness stated that he has personal knowledge that the applicant has been present in the United States since 1981, except for a trip to Mexico in March and April of 1988.

- submitted a sworn statement on behalf of the applicant wherein she stated that she has known the applicant since 1985. stated that she has personal knowledge that since 1985, the applicant has lived in La Belle, FL except for a trip to Mexico from March to April of 1988. The witness stated that subsequent to the applicant's return to the United States from Mexico in April of 1988, the applicant attempted to apply for legalization in Hialeah, FL but he was not allowed to apply because of his trip to Mexico. The applicant stated that she has knowledge of these facts because she is the applicant's friend and she personally accompanied him to the immigration office when he attempted to apply.

- [redacted] submitted two sworn statements on behalf of the applicant. [redacted] stated that the applicant was employed by [redacted] from March of 1982 until December 15, 1991 (the date of her statement). In a separate statement [redacted] stated that she knows that the applicant traveled to Mexico in March of 1987, and returned in April of 1987. The witness professes knowledge of this travel stating that as the applicant's employer, she gave him permission to be absent from work. The 1987 travel dates noted by are inconsistent with the 1988 dates stated by the applicant and other witnesses.

Although the applicant has submitted several witness statements in support of his application, he has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced witness statements have been submitted by acquaintances and family members. The statements submitted are of little probative value. The statements do little more than state that the witnesses know the applicant, and that he has been present at various addresses during the requisite period. Two statements were presented by a former landlord and the landlord's mother stating that the applicant had resided in one of their rental properties for a period of time. The witnesses did not provide any corroborating evidence in support of their statements such as proof of rental property ownership or rent receipts. One witness states that the applicant was employed by her during the requisite period. That statement, however, does not reference employment records which could confirm the employment, include proof of wages paid for employment, or state precise employment dates for the applicant in a profession that is seasonal in nature. The employment statement is not deemed probative and is of little evidentiary value as it does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Statements submitted by the applicant's brothers indicate that they lived with the applicant at various residences during the requisite period. The witnesses, however, did not provide documentation which could confirm residence locations such as lease agreements or rent receipts. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness affidavits must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite

period 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.