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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUL 28 2008

MSC-05-209-10469

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.

for Michael T. Kelley
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 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 April 27, 2005 (together, the I-687 Application). 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 as 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, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a brief. On appeal, the applicant states that he arrived for the first time in the United States in May 1981. The applicant also requests that the decision be reconsidered. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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).**

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on April 27, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [redacted] from May 1981 to January 1992. At part #33, he listed his first employment in the United States

as "construction" for Builders Construction from July 1981 to May 1984. At part #32, the applicant listed one absence from the United States. The applicant visited Mexico from October 2, 1987 to October 25, 1987. At part #31, the applicant did not list any affiliations or associations.

The applicant has submitted several affidavits and declarations; an employment letter; a copy of the applicant's birth certificate; a copy of the applicant's employment authorization card issued on July 20, 2005; a copy of the applicant's Internal Revenue Service (IRS) Forms W-2 for 2003 and 2004; and a copy of the applicant's Social Security Administration report showing that the applicant paid social security taxes from 1991 to 2005. The applicant's employment authorization card is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending I-687 Application as well as a prior Form I-687, dated April 23, 1991.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The record includes the following witness statements in support of the application:

- **A notarized affidavit from [redacted] dated February 20, 2006.** The declarant states that he worked with the applicant from 1981 to 1984 for Builders Construction and that they were paid in cash. The declarant also states that he has known the applicant up until the present day. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate how he dates the time that he worked with the applicant in the United States or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [redacted] dated February 22, 2006. The declarant states that he worked with the applicant from 1984 to 1987 for GBR Construction and that they were paid in cash. The declarant states that the company no longer exists.[2] The declarant also states that they were paid approximately $8.00 per hour and were never given a receipt to prove payment. Although the declarant states that he has known the applicant since 1984, the statement does not supply enough details to lend credibility to a

[2] The declarant does not provide a date for when the company ceased to exist. The AAO notes that the record of proceeding contains a letter from G.B.R. Construction Company dated July 5, 1990.

22-year relationship with the applicant. For instance, the declarant does not indicate how he dates the time that he worked with the applicant in the United States or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from dated February 22, 2006. The declarant states that he worked with the applicant from 1981 to 1984 for Builders Construction and that they were paid in cash. The declarant also states that he has known the applicant up until the present day. The declarant adds that the company moved from the State of California. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate how he dates the time that he worked with the applicant in the United States or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An unnotarized form-letter "Third Party Declaration" from [redacted] dated April 22, 2005. The declarant states that she met the applicant in 1981 for the first time. The declarant states that she knows that the applicant arrived in the United States before 1982 because "the applicant told [her]." The declarant also states that the applicant was her sister's best friend and later became a friend of the whole family. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant in the United States, or how frequently she had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An unnotarized form-letter "Third Party Declaration" from [redacted] dated April 22, 2005. The declarant states that she met the applicant in July 1980 for the first time. The declarant states that she knows that the applicant arrived in the United States before 1982 because "the applicant told [her] when [she] first met him." The declarant also states that the applicant was her husband's best friend and visited her house regularly for events like her daughter's birthday party or to have lunch with her family. The applicant adds that she has been to baptism parties at the applicant's house. Although the declarant states that she has known the applicant since 1980, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant in the United States, or how frequently she had contact with the applicant. Furthermore, the AAO notes that the declarant states that she

first met the applicant in 1980. However, the applicant claims to have first entered the United States in 1981. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter on G.B.R. Construction Company letterhead signed by and dated July 5, 1990. states that the applicant has been working for G.B.R. Construction Company "on a regular basis for about 36 months." The AAO notes that in the Form I-687, the applicant stated that he worked for G.B.R. Construction Company from June 1984 to June 1987. While [redacted] states that the applicant work for "about 36 months," he does not state when the applicant's employment began or when it ended. Although the statement is on company letterhead, it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested). The statement from [redacted] does not include much of the required information and can only be accorded minimal weight as evidence supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [redacted] dated February 22, 2006. The declarant states that he worked with the applicant from 1984 to 1987 for GBR Construction and that they were paid in cash. The declarant states that the company no longer exists.[3] The declarant also states that they were paid approximately $8.00 per hour and were never given a receipt to prove payment. Although the declarant states that he has known the applicant since 1984, the statement does not supply enough details to lend credibility to a 22-year relationship with the applicant. For instance, the declarant does not indicate how he dates the time that he worked with the applicant in the United States or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [redacted] Mariscal dated April 23, 1991. The declarant states that he knows the applicant and that the applicant "went to Mexico in October of 1987." The declarant states that his brother took the applicant "in his car." This affidavit

[3] The declarant does not provide a date for when the company ceased to exist. The AAO notes that the record of proceeding contains a letter from G.B.R. Construction Company dated July 5, 1990.

does not provide any details about the applicant's first entry into the United States or residence during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- The AAO accords no weight to the "Third Party Declaration" by [redacted] Qicea, because it was not signed.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in May 1981. The AAO notes that in a statement written in Spanish and signed by the applicant on May 11, 1994, the applicant stated that he arrived in the United States in January 1981. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on January 28, 2006. The director denied the application for temporary residence on August 10, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that he arrived for the first time in the United States in May 1981. The applicant also requests that the decision be reconsidered. Neither counsel nor the applicant addresses the director's concerns in her decision. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously 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 lack of credible supporting documentation, it is concluded that 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.