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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN DIEGO Date: JUN 0 9 2008

MSC-05-235-13267

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. 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.

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, San Diego. 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. 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, the applicant asserts that he has continuously resided in the United States during the requisite period.

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 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services on May 23, 2005. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Calexico, California from August 1981 until July 1987. At part #32 of the application where applicants are asked to list all of their absences from the United States since first entry, the applicant initially showed that he resided in Mexico from December 1987 until June 1991. During the applicant's interview, the adjudication officer amended this part of the application to reflect the applicant's testimony that he was absent from July 1987 until January 1988 and July 1988 until July 1991. It should be noted that the applicant neglected to provide a residential address on his application for his purported residence in the United States from January 1988 until July 1988.

The applicant submitted the following supporting documentation:

- **A letter from** [redacted] owner of [redacted] Enterprises, dated May 3, 2006. This letter states, "Mr. [redacted] worked aboard our tunaseiner M.V. Marietta for two fishing trips in 1988 from March thru July. His work was satisfactory and he was an outstanding crew

member." The applicant submitted a copy of a check issued by M.V. Marietta, dated March 15, 1988. These documents are inconsistent with the applicant's Form I-687 application. The applicant neglected to list his employment with [redacted] Enterprises on his application. The applicant listed his only employment during the requisite period as a laborer with [redacted] from August 1981 until June 1987. As stated above, the applicant did not provide a residential address on his application for the time period of January 1988 until July 1988. Given these inconsistencies, these documents are without any probative value and credibility as evidence of the applicant's residence in the United States from March 1988 until the end of the requisite period.

- Identical form affidavits from [redacted] and [redacted] respectively dated March 8, 2006, March 18, 2006 and April 25, 2006. The affidavits state that the affiants attest to the applicant's residence at [redacted], Calexico, California from August 1981 until July 1987. The affidavits further state that each affiant's relationship to the applicant is that of "a good friend." The affidavits contain several apparent deficiencies. First, they neglect to provide any information on the affiants' first acquaintance with the applicant. Relevant information would include how, when and where they first met. Second, they neglect to provide any information on the affiants' direct personal knowledge of the applicant's residence in the United States. Relevant information would include the type and frequency of contact they maintained. Given these deficiencies, these affidavits are of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- An affidavit from [redacted] dated April 25, 2006. This affidavit states, "[redacted] lived at [redacted] [sic] in Calexico, CA 92231 from August 1981 through July 1987 [sic] he is not able to provide hotel records due to the fact that the hotel burnt down [sic] please accept my testimony as proof of his residence." This affidavit offers no information related to [redacted]s direct personal knowledge of the applicant's residence at [redacted] Therefore, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- A letter from [redacted], former General Manager for [redacted] Farm Labor Contractor, dated May 13, 2005. This letter provides:

> I, [redacted] was a General Manager for [redacted] Farm Labor Contractor from the year 1975 to 1987. I do hereby certify that [redacted] had worked with this company as a farm laborer and he was engaged in harvesting produce such as lettuce and broccoli for the seasons from January 1982 to April 1986. That time this person was paid by cash at the rate of $4.25 to $4.50. At that time all of our crew members were paid by cash and we did not have proper employment records for those individuals. Also, the company had closed its operation on September 1987; therefore, this information is based only on my personal knowledge.

This letter is inconsistent with the applicant's Form I-687 application. The letter states that the applicant was employed as a laborer with [redacted] Farm Labor Contractor from January 1982 until April 1986. However, the applicant's Form I-687 application states that the applicant was employed with this company from August 1981 until June 1987. Furthermore, public records show that [redacted], located in Borrego Springs, California was incorporated in California on February 8, 1982.[1] Therefore, any claim that the applicant was employed with this company prior to February 1982 is suspect. Finally, the record shows that during the applicant's interview for temporary resident status, he testified that he was employed with [redacted] Farm Labor Contractor from September 1981 until July 1987. These dates do not correspond to this letter nor do they correspond to the applicant's Form I-687. Given the numerous inconsistencies, this letter is without any probative value and credibility as evidence of the applicant's continuous residence in the United States from January 1982 until April 1986.

On February 23, 2007, the director issued a Notice of Intent to Deny to the applicant. The director determined that the applicant failed to provide documentation establishing his eligibility for temporary resident status. The applicant was afforded 30 days to submit additional evidence to overcome the basis for the intended denial.

In response to the NOID, the applicant submitted affidavits from [redacted] and [redacted].

- The affidavit from [redacted], dated March 10, 2007, states, "I have known [redacted] to be a resident of Imperial County, California while he was employed in agriculture from August 1981 to July 1987. I have known and been close friends with Mr. [redacted] since 1981." This affidavit neglects to provide any information on [redacted]s first acquaintance with the applicant. Relevant information would include how, when and where they first met. Second, it neglects to provide any information on direct personal knowledge of the applicant's residence in the United States. Relevant information would include the type and frequency of contact they maintained. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- The affidavit from [redacted], dated March 9, 2007, states:

  I have known [redacted] to be a resident of Imperial County, California while he was employed in agriculture from August 1981 to 1987. He worked for me while I was the superintendent of Sticker Roofing in San Diego County From 1991-1999. I have been friends with [redacted] for many years and have known him to live in the United States since 1981.

[1] http://kepler.sos.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C1065846

This affidavit is ambiguous at to whether has direct personal knowledge of the applicant's residence in the United States from August 1981 until 1987. The affidavit does not specify the date that [redacted] first met the applicant. Notably, the affidavit states that [redacted] has known the applicant for "many" years without specifying the exact number of years. The affidavit states that the applicant was [redacted]'s subordinate at Sticker Roofing in San Diego County from 1991 until 1999. Although this is evidence of [redacted]'s personal knowledge of the applicant's residence, it does not relate to the requisite period. Therefore, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- The affidavit from [redacted], notarized on March 10, 2007, states, "I have known [redacted] to be a resident of Imperial County, California while he was employed in agriculture from August 1981 to July 1987. To the present date I have remained close friends with . I have known him to reside in the United States since 1981." is affidavit neglects to provide any information on [redacted]'s first acquaintance with the applicant. Relevant information would include how, when and where they first met. Second, it neglects to provide any information on [redacted]'s direct personal knowledge of the applicant's residence in the United States. Relevant information would include the type and frequency of contact they maintained. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On April 3, 2007, the director denied the application for temporary resident status. In denying the application, the director determined that the documentation the applicant submitted in support of his application failed to establish that he has resided in the United States for the requisite period.

On appeal, the applicant asserts that he has resided in the United States from August 1981 until July 1987. The applicant states that during this period of residence, his uncle had documentary evidence of his residence. The applicant states that his uncle lost these documents when he moved. The applicant notes that his uncle has been deceased since 1990.

The applicant furnishes copies of three photographs as evidence of his residence in the United States during the requisite period. Two of these photos are entitled "Hotel Del Rey, Calexico, California 1983" and the third photo is entitled "Calexico, California 1983." These photographs are not probative evidence of the applicant's residence in the United States during the requisite period. First, there is no indication that the person featured in the photos is the applicant. Second, the reliability of the date of these photos is based on the applicant's memory alone. The applicant's statement on appeal provides that "I believe" the photos were taken in 1983. There is no evidence that the photos were dated stamped upon the date they were taken or developed. Third, the photo entitled "Calexcio, California 1983" is blurred and it is difficult to decipher the

image. Finally, even if these photos were found to be of high probative value, they do not relate to the applicant's residence in the United States for the *entire* requisite period.

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 applicant has failed to provide probative and credible evidence of his residence in the United States during the requisite period. The applicant submitted numerous documents, which as noted, lack considerable detail. As discussed above, these documents are, at best, of little probative value and credibility as evidence of the applicant's continuous residence in the United States during the requisite period. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide sufficient documentary evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof in this proceeding. *See* 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, 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. Given the inconsistencies in the record and 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.

Lastly, it should be noted that a Federal Bureau of Investigation report based upon the applicant's fingerprints reveals that on June 17, 2000, he was arrested in Santa Barbara, California and charged with *Driving Under the Influence of Alcohol or Drugs* and *Driving Under the Influence of 0.08 Percent or More of Alcohol.* Cal. Veh. Code Ann. § 23152(a), 23152(b) (West 2000). The punishment for a first violation of this statute is imprisonment in the county jail for not more than six months. Cal. Veh. Code Ann. § 23536 (West 2000). Pursuant 8 C.F.R. § 245a.1(o), a conviction for these offenses would be classified as a misdemeanor under the Immigration and Nationality Act. Since the applicant has not provided any relevant court documents related to this arrest and the director did not request such documents, the disposition of the charges remains unknown. Under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), an applicant must establish that he has not been convicted of any felony or three or more misdemeanors committed in the United States. Hence, two misdemeanor convictions would not make the applicant statutorily ineligible for temporary resident status under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.