U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 17 2008

MSC-05-193-10583

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 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 failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods. The director noted that, during an interview with an immigration officer on December 8, 1995, the applicant testified under oath that he first entered the United States on January 5, 1982. The director also noted that the applicant stated, on an I-130 petition for Alien Relative filed on October 9, 1996, that he first entered the United States on January 1, 1982. Finally, the director noted that the record includes an employment letter from which states that the applicant worked for [redacted] from May 1985 until May 1986, but that this employment was not listed on the initial I-687 application submitted by the applicant in November 1994.

On appeal, the applicant has submitted a brief in which he states that he first entered the United States in November 1981 and has resided in the United States continuously since that time. The applicant also states in his brief that he was employed by [redacted] from November 1981 through March 1984. The applicant also states that he resided at [redacted] in Mendota, California from November 1981 through December 1987 "in the agricultural season." The applicant has not submitted additional documentation to verify the statements made in his brief.

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)(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).

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 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 April 11, 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 May 1985. As noted by the director, the applicant also testified, during and interview with an immigration officer on December 8, 1995, that he first entered the United States on January 5, 1982. This casts doubt on the applicant's claim to have resided in the United States throughout the requisite period.

At part #33 of the Form I-687 application where applicants were asked to list all employment in the United States dating back to January 1, 1982, the first period of employment the applicant listed began in 1985. In addition, the applicant submitted a letter from [redacted], president of Iresa [redacted]. In the letter, [redacted] states that the applicant was employed by [redacted] from May 1, 1985 to May 1, 1986. On appeal, the applicant states that he was employed by [redacted] from November 1981 through March 1984. However, the applicant fails to provide an explanation for this discrepancy and has not provided documentation of his employment from 1981 through 1984 such as pay stubs or copies of W-2 Forms.

The applicant has submitted the copies of his W-2 forms and income tax returns from the years 1988 through 2004. These documents, with the exception of the W-2 and tax return for 1988, are outside the requisite period and are therefore not probative of the applicant's claim of continuous residence and physical presence during the requisite period. On the tax return for 1988, the applicant listed his home address as [redacted], Garden Grove, CA 92640. This conflicts with information provided by the applicant on the I-687 application, where he has listed [redacted]., Santa Ana, CA and [redacted], Santa Ana, CA as his addresses during 1988. This discrepancy casts doubt on the credibility of the application.

The applicant failed to submit sufficient evidence to establish continuous unlawful residence in this country since prior to January 1, 1982. The applicant's statement on appeal that he entered the United States prior to 1982 is not sufficient to meet his burden of proof. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. §245a.2(d)(6).

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 little or no 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.