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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 08 2008

MSC 04 311 11085

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of 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 terminated by the Director, Los Angeles. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record contains Form G-28 Notices of Entry of Appearance from two different attorneys. This office will recognize the attorney who filed the most recent Form G-28 as the applicant's counsel of record. All representations will be considered, but today's decision will be furnished only to the applicant and the applicant's counsel of record. Former counsel will not be provided a copy of this decision.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (the 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 during the requisite period.

On appeal, counsel asserted that the director failed to adequately consider all of the evidence. More specifically, counsel argued that the director had failed to accord adequate weight to the affidavits submitted.

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 Immigration and Nationality Act (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).

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. 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.

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the Form I-687 application, which the applicant signed on July 15, 2004, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As of that residential history, the applicant stated that, from November 1981 to April 1985 he lived at [redacted], in Calexico, California; and from April 1985 to June 1988 he lived at [redacted], also in Calexico.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked for [redacted], whose address he gave as [redacted] Borego S.P.S., California 92004. The applicant did not state when he worked for [redacted]. The applicant further stated that he worked for [redacted] of [redacted], Los Angeles, California, as a sales manager. The applicant did not state when that employment began or whether it was continuing.

Between those two periods of employment, the applicant stated, "Self employee." [sic] The applicant did not state when he was self-employed, or the nature of that self-employment.

The pertinent evidence in the record is described below.

The record contains a photocopy of an employment verification letter, dated July 29, 2005, on the letterhead of [redacted] farm labor contractor. That letter is signed by [redacted]. Mr. [redacted] stated he was a general manager for [redacted] from 1981 to 1985, and that the applicant harvested produce for [redacted] from December 1981 to April 1985. Mr. [redacted] stated that the company paid all of its crew members in cash, did not keep records, and ceased operating from November 1987 to June 1988. Mr. [redacted] stated that the information he was providing was based solely on his own memory.

The employment verification letter from [redacted] does not conform to the requirements of C.F.R. § 245a.2(d)(3)(i), which is set out above. Although it will be considered pursuant to 8 C.F.R. § 245a.2(d)(6), it will be accorded less evidentiary weight than it would have been accorded had it conformed to the requirements of the applicable regulation.

Further, this office questions how a **former** employee of [redacted] who has not worked for that company since 1985, is able to provide employment verification letters on the [redacted] company letterhead. Further still, this office questions [redacted] ability to accurately recall, more than 20 years later, without reference to records, when the applicant worked for that firm. Yet further, in attempting to contact [redacted], an officer of CIS found that the telephone number provided is no longer in service. This renders the information on that employment verification letter less verifiable.

For all of these reasons, the affidavit of [redacted] will be accorded very slight evidentiary value.

The record contains an affidavit, dated August 1, 2005, from [redacted] of San Diego, California, who attests to the applicant's claim of residence in Calexico, California during the requisite period. Mr. [redacted] stated that the information he provided is based on his personal knowledge, but did not elaborate further. The affidavit stated:

> [The affiant] is able to determine the data [sic] of his acquaintance with the applicant in the United States from the following facts(s) [sic]: I have never had any kind of problems with [the applicant], and he has proven to me to be a loyal friend. He is always there to help someone in need in anything the person might be facing. He is a good citizen and a reliable person.

The affiant did not further detail how he is able to date his acquaintance with the applicant.

- The record contains an affidavit, dated August 1, 2005, from [redacted] of Northridge, California, which attests to the applicant's residence in Calexico, California during the requisite period. Mr. [redacted] stated that the information he provided is based on his personal knowledge, but did not elaborate further. The affidavit stated:

  > [The affiant] is able to determine the data [sic] of his acquaintance with the applicant in the United States from the following facts(s) [sic]: I have known [the applicant] for more than 23 years and he has always proven to be a man with good morals and proven to me to be a loyal friend. He is always there to help someone in need, in anything the person might be facing and does not expect anything in return. He is a good citizen and a reliable person.

  The affiant did not further detail how he is able to date his acquaintance with the applicant.

Neither of the above affidavits states the frequency of the affiants' contact with the applicant, and they will be accorded scant evidentiary value.

- The record contains a declaration, dated July 5, 2004, from the applicant. In it, he stated that he first entered the United States on or about November 5, 1981. He also stated that he worked for [redacted] from December 1981 to April 1985; and worked at El Remante Swap Meet in Calexico selling clothes from May 1985 to June 1988. The applicant did not state when he began to work for [redacted] of Los Angeles.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

The application was initially approved on August 4, 2005. In a Notice of Intent to Terminate, dated March 5, 2008, the director stated that the applicant failed to submit evidence sufficient to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

The record contains two responses to the Notice of Intent to Terminate. One comes from the applicant's former counsel and one from present counsel..

Former counsel provided a statement from the applicant, dated April 3, 2008. In it, the applicant reiterated his claim of continuous residence in the United States during the requisite period and his claim of employment for [redacted] under the supervision of [redacted]. Former counsel stated that the applicant is unable to locate [redacted] and that he hopes that the applicant's statement, which counsel characterizes as being stated under penalty of perjury, will be sufficient to establish his eligibility. This office notes that the applicant's statement contains no indication that it was sworn before a notary public or any other official authorized to administer oaths.

Present counsel submitted a letter in which he stated that the applicant is unable to locate [redacted], or [redacted]. Counsel stated that the applicant's evidence should be found sufficient and the application in this matter should be approved.

In the Notice of Termination, dated April 25, 2008, the director found that the evidence submitted is insufficient to demonstrate that the applicant resided in the United States during the requisite period. The director terminated approval of the application.

On appeal, counsel restated that the applicant has unsuccessfully tried to [redacted] and [redacted], and that the applicant's inability to provide additional evidence is due to the delay by CIS in requesting it. Counsel argued that, under these circumstances, the applicant's evidence should be found to be sufficient.

As was discussed above, none of the applicant's evidence is of great evidentiary value. The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. Approval of the application was correctly terminated on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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