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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: HOUSTON Date: SEP 23 2008

MSC 06 101 25398

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: 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, National Benefits Center. A subsequent appeal was rejected as untimely. Pursuant to a motion by the applicant the Director, National Benefits Center reopened the matter and the District Director, Houston, Texas denied the application again. The matter is now before the Administrative Appeals Office 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 (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, the applicant submitted his own affidavit and additional evidence.

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.

On the Form I-687 application, which the applicant signed on December 30, 2005, the applicant stated that his date of birth was May 15, 1972. The applicant was required to provide, at Item 30, an exhaustive list of his residences in the United States since his first entry. The applicant gave the address at which he had lived since 1999 and added; I will provide more information about my residenced [sic] at a later time." The record does not indicate that the applicant ever provided a list of his residences in the United States and when he lived in them.

The applicant was also required, at Item 33, to provide an exhaustive list of all of his employment in the United States since January 1, 1982. The applicant identified the employer for whom he had worked since October 2005 and added, "I will provide more information about my employment at a later time." The record does not indicate that the applicant ever provided a list of his employers in the United States and the dates of his employment with them.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he had been absent from the United States during December 1984, December 1987, and August 1988. The applicant added, "Short and innocent trips during less than 45 days during [sic] the legalization period. Whether the applicant was characterizing the absences listed or indicating that he had been absent from the United States on additional occasions is unclear.

The pertinent evidence in the record is described below.

- The record contains an affidavit dated August 2, 2006 from [redacted] who did not provide her address or phone number. [redacted] stated that she met the applicant in San

Diego, California during 1981. She further stated that she did not lose touch with the applicant when she moved to Houston, Texas, and that their friendship grew further when the applicant moved to Houston.

- The record contains an affidavit, dated August 2, 2006, ostensibly from [redacted] That affidavit does not contain the affiant's name or phone number. The affidavit states that [redacted] met the affiant during 1985 when the applicant visited Houston, Texas, although he was then living in San Diego, California. The affidavit further stated that the applicant came to the United States from Mexico during November 1981, but does not state the affiant's basis for that assertion. The affidavit further stated that the friendship between [redacted] and the applicant developed when the applicant moved to Houston.

- The record contains an affidavit dated August 2, 2006, purportedly from [redacted] That affidavit did not state [redacted] address, but provided his phone number. That affidavit stated that [redacted] met the applicant during 1982, when [redacted] worked for the same company as the applicant's uncle.

- The record contains an affidavit dated August 2, 2006 from [redacted] That affidavit does not contain [redacted] address or phone number. [redacted] stated that she first met the applicant during 1985, when he made a trip to Houston to visit his uncle. The affiant further stated that the applicant came to the United States from Mexico during November of 1981 but did not state her basis for that asserted knowledge. [redacted] stated that her friendship with the applicant developed when he moved to Houston during 1988.

- The record contains an affidavit dated August 11, 2006, from [redacted] whose address and phone number were not provided. The affiant stated that he met the applicant during 1988, without stating a specific date. Because that affidavit does not assert that the applicant was in the United Stated during the period of requisite residence, it is not relevant to any material issue in this matter.

- The record contains an affidavit, dated February 18, 2006, from [redacted] of Houston, Texas. [redacted] stated that the applicant is his nephew, and that he knows that the applicant entered the United States during November 1981, when he was ten years old. The affidavit further states that the applicant lived in San Diego, California until at least 1988, then moved to Houston, Texas, and lived with the affiant until 1995.

- The record contains an affidavit, dated February 3, 2006,[1] from [redacted] of Las Vegas, Nevada. The balance of the affiant's address and his telephone number were not provided. The affiant stated that the applicant is his nephew and that the applicant came to the United States during 1981 and lived in San Diego, California until 1988 when he moved to Houston, Texas. The affiant states that he had occasion to visit the Tiscarenos with whom

[1] Actually, the declaration was dated January 26, 2006, but it was notarized on February 3, 2006.

the applicant was living but did not state when. The affiant's basis for stating that the applicant entered the United States during 1981 is unclear.

- The record contains a declaration, dated February 23, 2006, from [redacted] whose address and phone number were not provided. Although that declaration includes a notary's attestation the notary did not sign it. It does not, therefore, qualify as an affidavit and will be accorded less evidentiary weight than a sworn statement. [redacted] stated that the applicant lived in San Diego since November 1981, and moved to Houston, Texas in 1988.

- The record contains a declaration, dated June 9, 2006, from [redacted], of Escondido, California, whose phone number was not provided. Although that declaration includes a notary's attestation the notary did not sign it. It does not, therefore, qualify as an affidavit and will be accorded less evidentiary weight. [redacted] stated that she has known the applicant "since he was a little boy," and that she and the applicant both came to the United States during November of 1981 and lived in San Diego. Finally, the declarant stated, "When his father's brother got knew [sic] that he was in San Diego, he came for him and took him back to Houston, Texas, were [sic] he lives now."

- The record contains a declaration, dated June 9, 2006, from [redacted] of Escondido, California, whose phone number was not provided. Although that declaration includes a notary's attestation the notary did not sign it. It does not, therefore, qualify as an affidavit and will be accorded less evidentiary weight. [redacted] stated that he has known the applicant "since [the applicant] was a little boy," that the applicant came to San Diego, California during November 1981, and that they lived in the same household "for several years." The declarant did not identify those years.

- The record contains a declaration, dated June 9, 2006, from [redacted] of Escondido, California, whose phone number was not provided. Although that declaration includes a notary's attestation the notary did not sign it. It does not, therefore, qualify as an affidavit and will be accorded less evidentiary weight. [redacted] stated that he has known the applicant "since [the applicant] was a little boy," when the applicant came to live with her family in San Diego, California during November 1981. The declarant did not state the years during which the applicant lived with her family in San Diego.

- The record contains an affidavit, dated June 14, 2008, from [redacted] whose address was not provided. [redacted] stated that he met the applicant during 1985, but that the applicant had been staying with the affiant's uncle and uncle's wife, who is also the applicant's aunt, since November of 1981. The affiant did not state his basis for that assertion. The affiant further stated that the applicant moved to Texas in 1988.

- The record contains an affidavit, dated June 14, 2008, from [redacted] whose address was not provided. [redacted] stated that he met the applicant in May 1985, but that the applicant had been staying with the affiant's uncle and the uncle's wife, who is also the applicant's aunt, since November of 1981. The affiant did not state his basis for the assertion

that the applicant lived with his uncle's family beginning in November 1981. The affiant further stated that the applicant moved to Texas in 1988.

- The record contains an affidavit, dated June 14, 2008, from [redacted] whose address was not provided. [redacted] did not state when she met the applicant, but stated that the applicant came to the United States during 1981. The affiant did not state her basis for that assertion, but stated that he and she lived in the same household during part of 1985 and that during 1988 the applicant moved to Texas.

- The record contains an affidavit, dated June 14, 2008, from [redacted] whose address was not provided. The affiant did not state when she met the applicant, but stated that the applicant came to the United States during 1981. The affiant did not state her basis for that assertion, but stated that she moved into the same household with him during 1985 and that during 1988 the applicant moved to Texas.

- The record contains a document issued on April 21, 1986 by National City Junior High School in the Sweetwater Union High School District regarding the requirements for promoting the applicant to the eighth grade. This office accords that document high credibility for the proposition that the applicant was then attending school in the United States.

- The record contains an affidavit in Spanish, dated December 13, 2007, and an English translation, from [redacted] of Mexico. Those affiants state that they lived in San Diego, California from 1981 to 1988, during which time the applicant lived with them. They affirm that the applicant was nine years old in 1981, and that when they returned to Mexico he remained in the United States.

- The record contains registered mail receipts, rent receipts, utility bills and money orders showing that [redacted] and others indicate lived at [redacted] during 1985 and 1985. Registered mail receipts for [redacted] show that he lived at [redacted] 1981 and 1984.

- The record contains pay stubs showing that [redacted] worked for [redacted] Landscape Construction, Inc., of El Cajon, California, during 1984, 1985, and 1985. Those pay stubs demonstrate that [redacted] lived in the United States during at least some parts of those years, but are not directly relevant to the applicant's claim of continuous residence during the requisite period.

- The record contains a temporary driver's license issued to [redacted] in San Diego, California, on March 4, 1986. Again, although that document demonstrates that [redacted] was in the United States, it is not directly relevant to the central issue in this case.

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

With the application the applicant provided no evidence pertinent to his claim of continuous residence in the United States during the requisite period. On March 29, 2006 the director issued a Notice of Intent to Deny (NOID) noting that no such evidence had been submitted.

The February 18, 2006 affidavit of [redacted] the February 3, 2006 affidavit of [redacted] the February 23, 2006 declaration of [redacted]; the June 9, 2006 declarations of [redacted] and the document from National City Junior High School appear not to have been considered by the director before sending that NOID. Whether they were then present in the record is unclear. In any event, that evidence will be considered in the instant decision.

The director denied the application on July 17, 2006. Although the chronology is unclear, CIS appears to have previously received the August 2, 2006 affidavits of [redacted] and the August 11, 2006 affidavit of [redacted], but not interfiled them. Upon discovering this additional evidence, the director reopened this matter.

Another NOID was issued on November 7, 2007. In it, the director noted that the applicant would have been nine years old during November 1981, when he claims to have first entered the United States. The director stated that some of the applicant's affidavits are unverifiable because the telephone numbers of the affiants were not provided, but that CIS officers were able to contact [redacted] declared that he is not sure whether he is acquainted with the applicant but that, in any event, he did not provide the affidavit attributed to him.

The director stated, yet further, that [redacted] declared that he is not sure when he first met the applicant, but that it may have been during 1986 or 1989. In any event, [redacted] reported that when he met the applicant, the applicant already had a full beard. The director noted that the August 2, 2006 affidavit, ostensibly from [redacted], states that he met the applicant during 1982. During 1982 the applicant would have been either nine or ten years old and would not have had a full beard.

The director accorded the applicant 30 days to respond to the adverse evidence and the pending denial of the application.

In an affidavit submitted in response, dated November 29, 2007 and received by CIS on December 3, 2007, the applicant stated that he did not know why [redacted] would deny having provided the affidavit attributed to him. He also stated that he was trying to obtain phone numbers for his affiants and additional evidence, including school records, to demonstrate his continuous residence during the requisite period. The applicant did not address the assertion of [redacted] that, when they met, the applicant already had a full beard.

Subsequently, counsel submitted an additional response to the NOID. Counsel provided the December 13, 2007 affidavit of [redacted], and the various receipts, bills, pay stubs, and the driver's license described above.

Neither of the responses to the November 7, 2007 NOID included a clarification of [redacted] denial that he furnished or signed the affidavit attributed to him. The applicant did not submit new phone numbers for his original affiants as he stated he intended to do. The applicant did not address the statement of [redacted] that when he first met the applicant, the applicant had a full beard, or the director's conclusion that the meeting of the applicant and [redacted] could not, therefore, have occurred during 1982, as the affidavit attributed to [redacted] states.

In the decision of denial issued May 9, 2008, the director found that the applicant had not overcome the evidence adverse to his eligibility, and had not sustained his burden of proof. The director denied the application. The director noted that, although counsel submitted considerable documentary evidence pertinent to the [redacted] family's residence in the United States, none of it predates August 1984.

On appeal, the applicant[2] submitted the June 14, 2008 affidavits of [redacted] and [redacted], all of which are described above, and his own July 14, 2008 affidavit.

In his own affidavit, the applicant stated that he believes that the evidence submitted is sufficient to show his eligibility. The applicant stated that he had provided working telephone numbers for all of his affiants initially, and that the inability of CIS to locate his affiants to verify the evidence provided was due to delay by CIS in attempting those contacts. The applicant asserted that the unverifiable nature of his evidence is, therefore, not his fault.

Initially, this office notes that, contrary to the assertion of the applicant, most of the affidavits submitted did not include telephone numbers and the record indicates that no telephone numbers were ever submitted for most of the applicant's affiants. Further, the affiants, in general, assert that they knew the applicant when he lived in San Diego in the eighties and remained friends with him when he moved to Houston, even to the dates of the affidavits. Some claim to be relatives. Some claim to have known the applicant almost his entire life. CIS was able to locate [redacted] and some of the applicant's other affiants. Further still, if the affidavits were to be believed, then the applicant was able to locate [redacted] and [redacted] and bring them to the same notary's office on the same day. That the applicant is now unable to locate his affiants to obtain their telephone numbers and clarification of the discrepancies noted seems unlikely.

Further, 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

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[2] Although the record contains a Form G-28 Notice of Entry of Appearance, there is no other indication that counsel participated in the appeal.

shall depend on the extent of the documentation, its credibility, and its amenability to verification. This office need not pass judgment on whether the unverifiable nature of the applicant's evidence is the applicant's fault. The issue in this proceeding is whether the applicant has furnished credible evidence sufficient to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period, rather than to determine whether failure to do so is his fault.

The telephonic interview of [redacted] strongly suggests that [redacted] neither furnished nor signed the affidavit attributed to him, but that it was produced without his knowledge. The applicant has not adequately addressed this inference.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The unreconciled discrepancy between the statements of [redacted] in his telephonic interview and the affidavit attributed to him not only destroys the credibility and evidentiary value of that individual affidavit, but seriously undermines the credibility and evidentiary value of all of the applicant's evidence.

The affidavit attributed to [redacted] indicates that he met the applicant during 1982, when the applicant was either nine or ten years old. In his telephonic interview, [redacted] stated that the applicant had a full beard when they met. The applicant has made no attempt to reconcile those dissonant facts.

Again, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The contradiction between [redacted] affidavit and the information he provided in his telephonic interview not only destroys the credibility and evidentiary value of that individual affidavit, but further damages the credibility and evidentiary value of all of the applicant's evidence.

Given the doubts raised about the evidence in this case, the applicant's evidence cannot be considered reliable, credible evidence sufficient to support his claim of continuous residence in the United States during the requisite period.

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 on this basis. The application was correctly denied 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.