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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals MS 2090*
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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FILE: [redacted] Office: CHICAGO Date: JUL 2 1 2009

MSC 06 098 22148

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.

John F. Grissom
Acting 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, Chicago. 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. In denying the claim the director also noted that the applicant stated in a letter to United States Citizenship and Immigration Services (USCIS) that he departed the United States in December of 1982 and remained outside the country for approximately 90 days which interrupted his claim of continuous residence during the requisite period.

On appeal, counsel submits a brief stating that the director erred by failing to submit a Notice Of Intent To Deny (NOID) before denying the claim, and by failing to notify the applicant of his right to seek review of the denial by a Special Master.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. In this instance, however, the director did not find that the applicant was ineligible for class membership, but denied the claim on its merits after considering all evidence of record. The case is not, therefore, subject to review by a Special Master.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant's claim:

> The applicant submitted witness statements from the following individuals, some of which notarized and/or sworn to: [redacted] The witness statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant lack sufficient detail to establish that the facts asserted therein are probably true. The witness statements are, therefore, not deemed probative and are of little evidentiary value.

It should further be noted that some of the witness statements are internally inconsistent and contradict information provided by the applicant on the Form I-687.

- The applicant states on the Form I-687 (executed December 30, 2005) that he resided at the following addresses during the requisite period:

  [redacted] from 1981 – 1986;

  [redacted] IL from 1986 – 1988.

- [redacted], the applicant's brother, submitted three witness statements concerning the applicant's residence in the United States during the requisite period. The statements are inconsistent with each other and inconsistent with the information provided by the applicant in the referenced Form I-687. The statements provide as follows:

  A statement dated January 25, 2006 states that the applicant lived with [redacted] at [redacted] from 1981 – 1987;

A statement dated August 15, 1991 states that the applicant lived with [redacted] at [redacted] from 1985 – 1987;

A statement dated September 6, 1990 states that the applicant lived with [redacted] at [redacted] from 1985 – 1988.

The record contains additional inconsistencies:

- The applicant lists the following absences from the United States on the 2005 Form I-687:

  December of 1982 to January of 1983 to visit the applicant's wife;

  June of 1987 to July of 1987 to visit family.

- In a letter dated August 4, 2005 referencing "Adjustment of Status," and addressed to "Dear Officer in charge," the applicant stated that on December 9, 1982 he and his girl friend decided to get married. The applicant stated that he was in the United States so he returned to Mexico where he remained for "approximately three months." He states that he thereafter visited his wife whenever he could and that during his visits, his wife became pregnant. This absence is not listed on the Form I-687. It is noted that the applicant has two children who were born in Mexico, with their respective birth dates being February 10, 1984 and February 10, 1986.

- The record contains a Form I-687 executed by the applicant on September 13, 1990. The residence addresses for the requisite period on that Form I-687 differ from the addresses listed by the applicant on the present Form I-687 (executed December 30, 2005).

- The absences on the 1990 Form I-687 are inconsistent with the absence information provided by the applicant on the 2005 Form-I687.

- [redacted] submitted a statement stating that the applicant worked for EL CID TACOS, INC. as a cook from September of 1981 until September of 1987. [redacted] of EL CID TACOS, INC., issued a statement dated September 3, 1991 stating that the applicant was employed by that company from September 8, 1987 until November of 1987. [redacted] also issued a separate affidavit on the letterhead of EL CID TACOS, INC. dated September 15, 1990 stating that he has been acquainted with the applicant since 1987.

These inconsistencies have not been explained and are material to the applicant's claim as they have a direct bearing on the applicant's activities and whereabouts during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

- The applicant also submitted photographs that he states were taken of him in the United States during the requisite period. The photographs cannot be verified as to time and place taken, and will not be given evidentiary value given the inconsistencies noted of record above.

- [redacted], Real Tres Hermanos, Inc. submitted a statement dated April 21, 2006 wherein he states that the applicant was employed for his company from December of 1987 through February of 1999.

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. This employment statement fails to provide the information required by the above-cited regulation. **The statement does not provide: the applicant's address at the time of** employment; show periods of layoff (or state that there were none); state the applicant's duties; declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statement is not deemed probative and is of little evidentiary value.

Finally, the applicant submitted copies of envelopes to indicate that he mailed letters from the United States to Mexico during the requisite period. The envelope copies are not of sufficient copy quality (postage identification) to permit authentication. Because of this, and the aforementioned inconsistencies in the record, they are afforded no evidentiary value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies of record noted, 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 of record and the applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.