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FILE: [REDACTED]  
MSC-05-315-11581

Office: LOS ANGELES

Date: JUN 01 2009

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*

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, Los Angeles, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining 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 noted that although the applicant testified under oath during his immigration interview that he entered the United States in May of 1981, the affiants stated that they met the applicant in the United States in 1987 and 1988 respectively. The director also noted that the applicant was 9 years old when he claims to have entered the United States and that the school letter he submitted was not accompanied by official school transcripts. 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 affiant \_\_\_\_\_ statement was mistranslated and that the affiant actually stated that the applicant moved in with the affiant in 1987 and not that the applicant entered the United States in 1987. The applicant submits evidence on appeal.

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. See 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted handwritten transcripts from the Oxnard School District. The applicant also submitted a letter from the Oxnard School District in which it is indicated that the applicant attended Cesar Chavez School from September 1, 1981 to April 22, 1984. The applicant submitted copies of immunization records for the years 1981-1985. This evidence establishes that the applicant probably resided in the United States from 1981-1985.

The applicant submitted the following affidavits as evidence:

- An affidavit dated October 21, 2005 from [REDACTED] owner of California Auto Details, in which he stated that he is aware of the applicant first arriving in the

United States in 1987, and that he was a co-worker of the applicant's father when they worked in a body shop in Los Angeles. He further stated that the applicant's father was tired of being in the United States without legal documents so he returned to his country in 1988, leaving the applicant with him. The affiant stated that he employed the applicant at his body shop at that time.

- An affidavit from [REDACTED] in which he stated that he has been a friend of the applicant's since 1987, when he met him through his father. He further stated that he and the applicant grew up together and that his father gave the applicant shelter and a job.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1987.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1988 and that he met the applicant through the applicant's father who was his co-worker.
- An affidavit from [REDACTED] in which he stated that he met the applicant in 1988 when the applicant came to work for him as a part-time maintenance man.
- A letter dated October 17, 2005 from [REDACTED] in which he stated that he is aware that the applicant has been a resident of the City of Bell Gardens for over 20 years.

Here, the declarants fail to specify the applicant's place of residence during the requisite period. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. The affidavits do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

The affidavits do not contain sufficient detail to establish the reliability of their assertions. The affidavits are insufficient to establish the applicant's 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 requisite period. Therefore, the affidavits have little probative value.

On appeal, the applicant reasserts his claim of eligibility for the immigration benefit sought. He asserts that the affidavit from [REDACTED] was originally written in Spanish and

mistranslated into English. The applicant asserts that [REDACTED] only stated that the applicant moved in with him in 1987, not that the applicant entered the United States in 1987. The applicant submits a handwritten letter from [REDACTED] along with his affidavit dated October 21, 2005. The handwritten letter is not accompanied by a full English language translation which a translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The applicant submitted the following attestations:

- A letter from Coastal Farms in which [REDACTED] states that the applicant worked at the strawberry fields picking strawberries from 1981 to 1985.
- An affidavit from [REDACTED] in which he stated that he has known the applicant and his father since 1981 and that he and the applicant's father worked together on a farm. He further stated that the applicant's father would usually have the applicant working with him on the same crew.
- A letter from [REDACTED] of Oxnard in which it is stated that the applicant has been a member of the Chapel from 1981 to 1987. This statement is inconsistent with the applicant's Form I-687 application at part #31, where he was asked to list all affiliations and associations with church groups or organizations, and he didn't list the Chapel. In addition, the statement fails to conform to regulatory standards for attestations by churches or organizations. Specifically, the letter does not specify the applicant's place of residence, it does not establish the origin of the information being attested to nor have there been any membership records submitted to substantiate the declarant's claim. 8 C.F.R. § 245a.2(d)(3)(v).

In the instant case, the applicant has provided sufficient evidence to establish that he probably resided continuously in the United States from 1981-1985. He has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above 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 reliance on insufficient evidence, 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.