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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 01 2009

MSC 05 187 11337

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 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 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 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. Specifically, the director noted that the applicant had renewed his passport in Mexico on December 24, 1981. He was then issued a non-immigrant visa on January 4, 1982 in Mexico. The applicant's passport establishes that the applicant next entered the United States on January 24, 1982. The director determined that it "was more probable than not that [the applicant was] in Mexico on January 1, 1982[,] and did not come to the U.S. again until January 24, 1982."

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted. Specifically, the applicant states that he has continuously resided in the United States since May of 1979. The applicant also states that United States Citizenship and Immigration Services (USCIS) erred in these proceedings by failing to issue a Notice of Intent to Deny (NOID), prior to the denial of his Form I-687 application, as required by the settlement provisions of *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004. It is the applicant's position that this procedural error by USCIS amounts to a denial of due process and necessitates a reversal of the director's decision.

The applicant, through counsel, incorrectly asserts on appeal that the director was required to issue a NOID pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

THE APPLICANT'S PASSPORT

The record contains a copy of pages 8, 9, 10, 11, 30 and 31 of the applicant's passport (Number [redacted]). Those pages indicate that the applicant was issued a multiple entry B-1/B-2 nonimmigrant visa on December 9, 1977, which was valid until December 9, 1981. The applicant's passport bears passport stamps indicating that he entered the United States on the following dates pursuant to that visa: December 11, 1977; October 16, 1978; November 27, 1978; December 6, 1978; May 19, 1979; July 20, 1979; September 15, 1979; November 6, 1979; March 27, 1980; October 28, 1980; June 25, 1981; September 9, 1981; and October 21, 1981. The applicant's passport was renewed in Mexico on December 24, 1981, and was valid until December 7, 1983. He was then issued a B-2 multiple entry visa on January 4, 1982 with no expiration date (Indefinitely). Pages 30 and 31 of the applicant's passport indicate that pursuant to that visa, the applicant entered the United States on January 24, 1982, March 3, 1982, April 26, 1982 and February 8, 1987. The record of proceeding contains additional passport information establishing that the applicant was issued a passport ([redacted]) valid from 1984 until 1989. A copy of page seven of that passport indicates that the applicant was admitted into Japan on September 16, 1984, and that he departed Japan on October 20, 1984.[1]

This information is inconsistent with the applicant's previously filed Form I-687 which lists two exits from the United States during the requisite period, in August of 1982 and January of 1987.

WITNESS STATEMENTS

- [redacted] submitted a statement dated October 25, 2002 that was neither sworn to nor notarized wherein he states that he is a retired physician who had a private practice in North Hollywood, CA from 1980 until April of 1999. [redacted] states that the applicant was his patient for many years. [redacted] references a letter he submitted on the applicant's behalf dated October 27, 1998 and states that the information contained in that letter is true and correct, but that the medical records associated with that letter are no longer available because they were destroyed, pursuant to AMA guidelines, two years following his retirement.

  letter of October 27, 1998 states that the applicant was first treated by him on November 13, 1981. The record also contains a "Certificate to return to work or school" signed by [redacted] indicating that the applicant was under the care of [redacted] for upper respiratory infection on November 13, 1981, and that the applicant may return to work on November 16, 1981. [redacted] October 27th letter lists the following treatment dates for the applicant: December 7, 1982; February 7, 1983; May 26, 1985; March 14, 1987; and subsequent dates which are not relevant to these proceedings as they are outside the requisite period.

[1] The passport dates noted are based upon a visual inspection by the AAO of the passport pages submitted by the applicant. Some of the passport stamps are of poor copy quality.

- [redacted] submitted a sworn statement wherein she states that she has personally known the applicant since October 16, 1981 when the applicant worked as a handyman performing construction labor on the affiant's home. The applicant's current Form I-687 does not list any employment in the United States during the requisite period. His previously filed Form I-687 lists employment at Rosas Catering from 1981 – 1988.

  submitted a second statement on behalf of the applicant dated March 6, 2005. That statement is neither sworn to nor notarized. In that statement [redacted] states that she first met the applicant on October 16, 1981 when the applicant applied for a job assisting Ms. and her husband with home restoration. [redacted] further states that on January 8, 1982 and April 2, 1982, the applicant was invited by [redacted] to attend birthday celebrations at their residence, and that the applicant has continued to celebrate those birthdates with the [redacted] family annually.

- [redacted] submitted a statement on behalf of the applicant dated March 6, 2005. That statement is neither sworn to nor notarized, and contains the same information noted above in the unsworn statement of his wife, [redacted]

- [redacted] submitted a sworn statement dated November 19, 2001 wherein he states that he has personally known the applicant since January 1, 1982 when the two met at a 1982 New Year party. The affiant states that the applicant is his wife's cousin.

  [redacted] submitted a 1987 sworn statement wherein he states that he has personal knowledge that the applicant has been residing in North Hollywood, CA from January of 1982 until November of 1989, and that the applicant is the cousin of his wife.

  submitted a sworn statement wherein he states that he has personal knowledge that the applicant has resided in the United States from January of 1982 until November of 2001. [redacted] notes that the applicant is his wife's cousin.

  [redacted] submitted a statement dated March 6, 2005, that is neither sworn to nor notarized wherein he states that he first met the applicant in California in 1980. [redacted] states that his wife's cousin ([redacted] is married to the applicant, that he was introduced to the applicant at a family gathering, and that he sees the applicant six or seven times a year at family gatherings. The record contains no explanation for the inconsistencies in the above witness statements concerning when the witness first met the applicant.

- [redacted] submitted a sworn statement dated March 11, 1993, wherein he states that he is the applicant's brother, that he entered the United States with the applicant on May 5, 1979, and that he lived with his brother in a cousin's apartment for a period of approximately 10 years (until approximately February of 1990). The affiant states that the applicant's family came to the United States from Mexico "shortly before February of 1990"

and the applicant then moved to Van Nuys, CA. The affiant states that since 1979, except for a period of 2 ½ years when the applicant lived with his wife, he has always shared a residence with the applicant and has personal knowledge that the applicant has lived most of his life in the United States. The affiant states that the applicant was prevented from filing an amnesty application because he repeatedly returned to Mexico using a visitor's visa.

[redacted] submitted a statement dated March 6, 2005 that is neither sworn to nor notarized wherein he states that he first entered the United States with the applicant (his brother) on May 5, 1979, and that the two were admitted with B-2 visas. The witness states that the two drove to the residence of a cousin where they resided until February of 1990. The witness further states that he filed for amnesty in 1987, but that his brother was not permitted to file because he had repeatedly entered the United States with a valid visitor's visa.

- [redacted] submitted a statement dated March 6, 2005 that is neither sworn to nor notarized wherein she states that she was introduced to the applicant on December 24, 1980 at the home of a friend. The witness states that thereafter (in 1981), she saw the applicant often as he would visit her friend's residence, and that she moved next door to her friend in 1984 and she would see the applicant on a daily basis. The witness dated and later married the applicant's brother in October of 1988, and sees the applicant at family gatherings.

- [redacted] submitted a statement dated March 6, 2005 that is neither sworn to nor notarized wherein she states that she knew the applicant in Mexico, that the applicant came to the United States before her, but upon her arrival the applicant would come to her house to visit her husband. [redacted] states that she has remained in contact with the applicant at her home and/or the homes of relatives.

- [redacted] submitted a statement dated March 6, 2005 that is neither sworn to nor notarized wherein he states that he first met the applicant in Mexico when the applicant was dating one of his cousins. [redacted] states that when the applicant arrived in the United States the applicant would often come to his residence for family gatherings.

- The applicant submitted an unsworn and undated statement wherein he states that he has been living illegally and continuously in the United States since before January 1, 1982. He states that he did not apply for legalization before the May 4, 1988 deadline because he believed that he was ineligible based upon information that he received indicating that persons who departed the United States subsequent to January 1, 1982 and returned with a non-immigrant visa were ineligible.

[redacted] submitted a notarized statement wherein she states that she has personal knowledge that the applicant has resided in the United States from December of 1981 until

October of 1989. states that she has knowledge of this because the applicant is the brother of a construction worker who has been employed by her husband since 1980.

submitted a notarized statement wherein he states that he has personal knowledge that the applicant has resided in the United States from December of 1981 until October of 1989. His knowledge is based on the fact that the applicant's brother has worked for him as a construction laborer since 1980.

[redacted] submitted a statement dated March 5, 2005 that is neither sworn to nor notarized wherein he states that he first met the applicant in California in 1980 at a birthday party, and that he has seen the applicant "on and off" since then.

- [redacted] submitted a statement dated March 6, 2005 that is neither sworn to nor notarized wherein he states that he is the applicant's brother, and that the applicant first entered the United States with another brother on May 5, 1979.

- submitted a statement that is neither sworn to nor notarized wherein she states that the applicant has been living and paying rent with the applicant's brother, from 1980 until November 1, 1989. states that rent receipts have been issued regularly to [redacted]

Although the applicant has submitted his unsworn statement and numerous witness statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The referenced witness statements have been submitted by family members and acquaintances. The witness statements submitted by non-family members state generally how the affiants know the applicant, and that the applicant has resided in the United States for the requisite period. The witness statements provide no additional relevant information. 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, therefore, are not deemed probative and are of little evidentiary value.

The witness statements from the applicant's brothers also fail to provide sufficient detail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. The affidavits provide general statements which state that: the applicant traveled to the United States in 1979; the applicant lived with one or both brothers, and/or other family members; and the applicant has resided in the United States for the duration of the requisite period. The witness statements do not provide concrete, detailed information about the applicant's continuous unlawful residence in the United States. Nor do they provide concrete detailed information about the applicant's whereabouts and activities during the requisite period. The witness statements do not, therefore, provide probative and credible information establishing the applicant's continuous unlawful residence in the United States for the duration of the requisite period, for the same reasons set forth above in discussion about the witness statements from the applicant's acquaintances.

EMPLOYMENT

- [redacted] submitted an undated statement on the letterhead of Rosas Catering that is neither sworn to nor notarized. In that statement [redacted] states that the applicant worked for him, "off and on" on a full and part-time basis from 1981 to 1988. The applicant's duties included cooking and food service. The statement provides no additional information. The applicant's Form I-687 does not list any employment in the United States during the requisite period.

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. The employment statement submitted by the applicant from Rosas Catering is of little evidentiary value as it does not provide the information required by the above-cited regulation. As such, the employment statement is considered neither probative nor credible.

OTHER EVIDENCE

- The applicant submitted a copy of his California driver's license issued on December 26, 1980, a California driver's license issued Mary 31, 1984, and a California Identification Card issued on December 26, 1980. These documents indicate that the applicant was in the United States on the dates the documents were issued, but do not establish his continuous residence in the United States throughout the requisite period.

The evidence of record establishes that the applicant entered the United States on several occasions before and during the requisite period, and that the applicant traveled freely between the United

States and Mexico on valid nonimmigrant visas. The record contains inconsistent and weak evidence that the applicant was employed in the United States during the requisite period. The applicant's brothers were granted permanent residence under the Legalization program, but their circumstances differed from the applicant's in that they did not renew and continue to travel on the nonimmigrant tourist visa. The record is sufficient to establish that the applicant has been in this country on various occasions during the requisite period, but is not sufficient to establish the applicant's claim of continuous unlawful residence which would entitle him to the immigration benefit sought.

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.