U.S. Department of Homeland Security
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: SEP 16 2009

MSC 05 217 10051

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, 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, 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. Specifically, the director noted that the affidavits submitted by the applicant in support of his claim lacked sufficient detail to establish the applicant's residence in the United States for the duration of the requisite period.

On appeal, counsel submits additional evidence and a brief stating that the applicant has submitted sufficient documentation to establish his continuous residence in the United States for the duration of the requisite period.

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:

- [redacted] submitted two statements in support of the applicant's claim. In an affidavit dated February 4, 2002, the affiant states that she has personal knowledge of the applicant's addresses in the United States from December of 1981 until October of 1989. The applicant listed those addresses and states that she met the applicant through her former boyfriend in 1981. In a statement dated May 31, 2007, the applicant states again that she met the applicant through her former boyfriend and that the applicant would visit her residence with her boyfriend. Ms. [redacted] states that the two became close friends, and that the applicant is like a family member to her participating in family events and socializing on a regular basis.

- [redacted] submitted two statements in support of the applicant's claim. In an affidavit dated February 7, 2002, the affiant states that he has personal knowledge of the applicant's addresses in the United States from December of 1981 until October of 1989. The applicant listed those addresses and states that the applicant is a family friend who visited his

home in Pasadena, California "from time to time" from December of 1981 to October of 1989. [redacted] submitted a second statement dated May 30, 2007 wherein he stated that he first met the applicant in January of 1982 at his wife's medical office in Los Angeles, California. He further states that the applicant became a family friend and visited his home in California, and in Hawaii after the [redacted] family relocated in the year 2000.

- [redacted] submitted three statements on behalf of the applicant. In an affidavit dated February 7, 2002, [redacted] states that she has first hand knowledge of the applicant since December of 1981, and that she has been aware of the applicant's continuous residency in the United States since that time.

  [redacted] submitted an affidavit dated July 28, 2003 stating that she was a licensed physician in Los Angeles from 1972 until 1991, and that the applicant was her patient from December of 1981 until her retirement in 1991. The affiant states that she examined the applicant "on and off" during the aforementioned time frame and that she is, therefore, aware of his continuous residence in the United States since 1981.

  submitted a statement dated September 19, 2003 on the letterhead of her former office indicating that she worked at the listed address from April of 1979 until 1991. Dr. [redacted] provides her California medical license number and the address of the Medical Board of California to verify that she did, in fact, practice medicine at that address during the aforementioned time frame.

- [redacted] submitted an affidavit dated January 28, 2002 wherein he stated that he has personal knowledge of the applicant's addresses in the United States from December of 1981 until October of 1989. The applicant listed those addresses and states that the applicant is his friend and that the two met "from time to time" from January of 1982 until October of 1989.

- [redacted] submitted an affidavit dated February 2, 2002 wherein she stated that she has personal knowledge of the applicant's addresses in the United States from January of 1983 until April of 1991. The applicant listed those addresses and states that the applicant is her friend and that she talked to the applicant "from time to time."

- [redacted] submitted two statements on behalf of the applicant. In an affidavit dated February 6, 2002, [redacted] stated that he had first hand knowledge of the applicant since January of 1984, and that he is aware of the applicant's continuous residence in the United States since that time. In a statement dated May 23, 2007, [redacted] stated that he has known the applicant since 1984, having met him at the home of a friend in Los Angeles. stated that the two became friends over time and that the applicant has visited his home on many occasions.

- [redacted] submitted an affidavit on behalf of the applicant wherein he stated that he has personal knowledge of the applicant's addresses in the United States from October of 1986 until April of 1991. The applicant listed those addresses and states that the applicant was his

neighbor in Anaheim and would assist him in repairing cars and stereos during the aforementioned time period.

- submitted an affidavit dated December 31, 2001 wherein he stated that the applicant was his roommate in Los Angeles from January of 1983 until June of 1984.

- [redacted] submitted two affidavits on behalf of the applicant. In an affidavit dated February 28, 2002, the affiant stated that the applicant was his roommate in Anaheim, California from October of 1986 until October of 1989. By affidavit dated July 31, 2003, the affiant stated that the applicant was his roommate in Anaheim, California from October of 1986 until October of 1989, with the two of them sharing expenses. The affiant stated that all utilities were in his name, but that the rental agreement was in the name of both parties (a copy of the rental agreement was not submitted for the record). The affiant further states that the applicant left the United States in 1987 for approximately one month. Upon the applicants return, he attempted to file a legalization claim, but his claim was rejected because he had traveled outside the United States without advance parole.

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 applicant submitted a copy of an envelope addressed to him from [redacted]. The envelope bears a metered postmark date of August 28, 1988 and is addressed to the applicant in care of Junction Liquor in Anaheim, California.

The record contains various inconsistencies which are material to the applicant's claim as they have a direct bearing on the applicant's activities and whereabouts during the requisite period.

- In the Form I-687 signed by the applicant on April 15, 2005, the applicant listed the following employment history during the requisite period.

  December of 1981 – February of 1984 - Self employed

  March of 1984 – September of 1986 - Hardy Box

October of 1986 – December of 1987 - Commerce Electronics

January of 1988 – September of 1989 - Junction Liquor

- In a Form I-687 signed by the applicant on January 3, 1990, the applicant listed the following employment history during the requisite period.

  December of 1981 – January of 1984 - Sundried Foods

  March of 1984 – September of 1986 - Hardy Box

  October of 1986 – September of 1989 - Commerce Electronics

- In a separate proceeding, the applicant testified at his Legal Immigration Family Equity (LIFE) that he was first employed in the United States at an Arco gas station for approximately six months, and that he then worked for about three years at odd jobs (cleaning, painting, cutting grass) until 1985. The applicant stated that beginning in 1986, he worked at a liquor store for approximately three years.

The applicant submitted no documentation corroborating his statements about employment during his LIFE interview or his claims of employment listed on his Form I-687 applications.

- On the Form I-687 signed by the applicant in 1990, the applicant stated that he resided at [redacted] from October of 1986 until October of 1989. On the Form I-687 signed by the applicant in 2005, the applicant stated that he resided at [redacted] from October of 1986 until October of 1989. Five individuals submitting affidavits on behalf of the applicant stated that he lived at [redacted] from October of 1986 until October of 1989.

The inconsistencies noted have not been explained and are material to the applicant's claim because 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 only other evidence submitted by the applicant in support of his application is his own statement. The applicant's statement, however, in the absence of other relevant and probative evidence establishing his residence during the requisite period, will not sustain his claim. As

previously noted, in order 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).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.