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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

L1

[redacted]

DATE: AUG 0 6 2012 OFFICE: HOUSTON FILE: [redacted]

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.

Perry Rhew
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, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On March 2, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) pursuant to the terms of the CSS/Newman Settlement Agreement. On October 24, 2007, the application was approved. Upon secondary review, on March 8, 2012, the director determined that the applicant was ineligible for temporary residence, finding that he failed to meet his burden for class membership.

On March 22, 2012, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. On appeal, counsel, on behalf of the applicant, asserts that the applicant submitted a CSS/Newman questionnaire and an affidavit attesting to the fact that he was discouraged from apply for legalization. The AAO will consider the applicant's claim de novo, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).[1]

The regulations at 8 C.F.R. § 245a.2(u) states:

> The temporary resident status may be terminated upon the occurrence of any of the following:
>
> (i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;
>
> (ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).
>
> (iii) The alien is convicted of any felony, or three or more misdemeanors;
>
> (iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

As stated by the director, on January 23, 2004 and February 18, 2004, the federal courts approved settlement agreements in the *Catholic Social Services* (CSS) and *LULUAC* (or Newman) legalization cases. The CSS and LULAC cases are class action lawsuits that involved certain claims by individuals who did not apply for legalization under the Immigration Reform and Control Act of 1986 (IRCA). The settlement agreements allow for those who meet certain requirements to

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[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

apply for Temporary Resident states under the 1986 Amnesty program of Section 245A of the Immigration and Nationality Act.

To be eligible applicants could file applications pursuant to these Settlement Agreements if established that they either: 1) have already filed for class membership in CSS; or 2) were prima facie eligible for IRCA legalization, attempted to file a legalization application with the Immigration and Naturalization Service (INS) or a Qualified Designated Entity (QDE) between May 5, 1987, and May 4, 1988, and had that application rejected ("front-desked") by an INS officer or QDE.

The record reveals that the applicant applied for legalization through the IRCA and his application was received on April 21, 1988. The application was denied on July 21, 1988, for failure to establish entry into the United States prior to January 1982. The applicant appealed the denial and the denial was subsequently dismissed.

The record contains a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act, dated August 2, 1988, signed by [redacted] stated that, as the applicant's QDE Representative, she advised him "to file his application so as not to miss the May 4th deadline."

Upon review, the AAO find that the evidence in the record establishes that the applicant timely applied under the IRCA program during the qualifying period between May 5, 1987 and May 4, 1988. The applicant failed to establish that he was "front-desked" or "discouraged" from applying for the IRCA legalization program. Therefore, the applicant is not a class member of the CSS/Newman (LULAC) settlement agreement. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Furthermore, it is noted that the evidence in the record fails to establish the applicant's continuous residence in the United States in an unlawful status for the requisite period. The submitted evidence consists of affidavits from five individuals claiming to know the applicant during the requisite period and employment letters from six individuals.

The witness statements from [redacted] and [redacted] 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. These statements fail, however, to establish the applicant's 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.

None of the affidavits 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 have 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.

It is also noted that the record contains several discrepancies. The two affidavits from [redacted] contain an inconsistency regarding when he first met the applicant. In his first affidavit, [redacted] states that he has known the applicant from February 1987 to August 1990; whereas, in the second affidavit, he states he met the applicant in January 1982. In addition, [redacted] states that the applicant has been a member of his parish since 1985. However, in the applicant's Form I-687, at Question #31, where asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated "None" and failed to indicate that he was ever a member of any church. These discrepancies cast doubt on the credibility of the applicant's claim. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, the witness statements have little probative value.

The employment letters from [redacted] and [redacted] state that the applicant worked for them for portions of the requisite period. The declarations do not conform to regulatory standards for letters from employers as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record contains three employment letters from [redacted] of Kirbyville Auction Barn. While he states in all three letters that the applicant began employment in 1981, he states different dates for the end of employment in each letter, i.e. March 1983, February 1985, and November 1985. The employment letter also fails to provide 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. Given this, the letters provide minimal probative value as evidence in support of the applicant's claim.

The record contains several employment letters from [redacted] of [redacted] Inc. [redacted] states that the applicant worked for his company from February 1985 through January 1988 and lived in the ranch rent house. The employment letters fail to 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.

It is also noted that the record contains an employment letter from [redacted], who states that the applicant worked for him in February 1987 as service station attendant. However he makes no mention of the applicant's employment for [redacted] from 1985 to 1987 as [redacted] asserted in his employment letter. He also states that he knew the applicant worked

for [redacted] in 1983 and then for [redacted] and [redacted], but fails to provide specific details or the basis for his knowledge. Given the discrepancy and lack of details, the letters provide minimal probative value as evidence in support of the applicant's claim.

The employment affidavits from [redacted] states he has known the applicant since January 1981, the applicant resided at [redacted] and the applicant worked on his farm from March through September 1983 and from February through November 1984. The employment letters fail to 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 affidavits provide minimal probative value as evidence.

The employment affidavits from [redacted] state that the applicant worked for his service station during the requisite period. However, in one affidavit, the affiant states the applicant worked for him from January 1986 to November 1986; whereas, in the second affidavit, the affiant stated from 1985 for approximately two years. This discrepancy detracts from the credibility of the applicant's claim. The employment letters fail to provide the applicant's address of residence during the employment, 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 affidavits provide minimal probative value as evidence in support of the applicant's claim.

The employment affidavit from [redacted] states that he operated a service station and the applicant worked there from December 1986 to January 1987. The employment letters fail to provide the applicant's address of residence during the employment, 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 affidavit provides minimal probative value as evidence in support of the applicant's claim.

While the above employment letters indicate that the applicant was employed in the United States during portions of the requisite period, the evidence fails to establish the applicant's continuous residence during the requite period due to the discrepancies and lack of specific details as required under the regulations at 8 C.F.R. § 245a.2(d)(3)(i).

It is also noted that the record contains two Form I-687s, one signed by the applicant in 1988 and one signed in 2005. In the first Form I-687, dated in 1988, the applicant stated that he was employed by [redacted] from March 1982 through November 1984; whereas, in the second Form I-687, he stated he worked [redacted] from March 1983 through November 1988. In the first Form I-687, the applicant failed to list any employment prior to March 1982; whereas, in the second Form I-687, he stated that he worked for [redacted] in July 1981. These inconsistencies further detract from the credibility of the applicant's claim. 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.

Based upon the foregoing, the evidence submitted in support of the applicant's claim has been found to contain inconsistencies, lack specific details and to have minimal probative value as evidence of the applicant's presence in the United States for the requisite period. Given this, the evidence in the record fails to establish by a preponderance of the evidence that the applicant continuously resided in an unlawful status in the United States from before January 1, 1982 through the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*.

Accordingly, the AAO affirms the director's decision to terminate the applicant's temporary resident status and deny the instant application.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.