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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

[redacted]

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DATE: FEB 27 2012 Office: LOS ANGELES 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, Los Angeles, California. In a Service motion to reopen, the director's decision was withdrawn and the case was reopened in order to continue the processing of the application. The director subsequently denied the application. 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. The director denied the application on September 10, 2010, finding that the applicant had not submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period.

On appeal, counsel states that the applicant submitted sufficient evidence to meet the preponderance of evidence standard.

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).

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).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 "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. 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. Evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

The applicant claims on his Form I-687 application that he resided in Van Nuys, California, from March 1981 to December 1988. He indicated he worked for [redacted] California, as a carpenter from May 1981 to August 1981 and afterwards worked with various employers painting buildings throughout the remainder of the requisite period. He further

indicated that he had three brief absences from the United States with one absence during the requisite period from December 1988 to December 1988.

In the director's Notice of Intent to Deny (NOID) dated June 27, 2010, the director noted that the applicant had not established that he entered the United States prior to January 1, 1982 and that he resided continuously in the United States throughout the requisite period. The applicant was given 30 days to submit additional evidence in support of his application. The applicant responded to the NOID.

The applicant submitted his California Identification card that was issued April 2, 1981. The ID serves to confirm the applicant was in the United States on that date, however, it does not establish continuous residence throughout the requisite period.

The applicant submitted copies of photographs. The photos have no probative value.

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [redacted] and [redacted]

In an affidavit, [redacted]n attests to being the applicant's cousin and residing in the same households since March 1981. The affiant states the applicant went to El Salvador in August 1986 and returned in November 1986. The applicant does not claim this absence on his Form I-687 application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho, supra.* In another declaration, [redacted] that he knows the applicant worked as a carpenter, a painter and also worked in a washing machine factory from 1981 to 1988. Again, he states the affiant left the United States but this time in late October 1986 and returned. The affiant does not give any other information about the applicant and the events surrounding their association during the requisite period.

In an affidavit, [redacted] attests to being the applicant's cousin and knowing the applicant since birth. The affiant states that since he lived nearby the applicant, they always keep in contact. The affiant gives the address he resided at in the United States since 1980. The affiant does not give any other information about the applicant and the events surrounding their association during the requisite period. In another affidavit, the affiant states that the applicant lived in his sister's apartment at [redacted]since March 1981. He also claims that the applicant traveled outside the United States in October 1986 and returned in December 1986. The affiant states the applicant worked as a carpenter for eight months, a painter and also worked in a washing machine factory for 10 months from 1981 to 1988.

The affiant, [redacted]ttests to being the applicant's cousin and knowing the applicant since birth. The affiant states that they are relatives and they always kept in contact.

In an affidavit, [redacted] attests to being the applicant's cousin and knowing the applicant since birth. The affiant states that they keep in contact because they lived at the same house. The affiant gives the address she resided at in the United States since 1976. In another affidavit, the affiant states that the applicant lived in her apartment a[redacted] since March 1981. She also claims that the applicant traveled outside the United States in October 1986 and returned December 1986. The affiant states the applicant worked as a carpenter for eight months, a painter and also worked in a washing machine factory for 10 months from 1981 to 1988.

In an affidavit, [redacted] attests to knowing the applicant since 1966, when they were kids. The affiant states that she knows the applicant came to the United States before January 1, 1982 because when the applicant came in 1981, she started going out with him and was his girlfriend. The affiant states that the relationship lasted for six months and now they are just good friends. The affiant gives the address she resided at in the United States since 1975. The affiant states that they stayed in contact with each other because they both lived with [redacted] from 1984. In another affidavit, the affiant states that the applicant lived with her friend, B. Calderon, at her apartment at [redacted] since March 1981. She also claims that the applicant traveled outside the United States in October 1986 and returned in December 1986. The affiant states the applicant worked as a carpenter for eight months, a painter and also worked in a washing machine factory for 10 months from 1981 to 1988.

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of affidavits submitted by the applicant. To be considered probative and credible, 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 period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. The AAO finds that the witness statements do not provide sufficient details and in some instances are contradictory to the applicant's testimony. In many of the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits/declarations and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. The affidavits do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite

period. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value.

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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence for the entire requisite period 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 evidence of record, it is concluded that the applicant failed to establish that he entered the United States prior to January 1, 1982 and continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

It is noted that the affiants claim that the applicant traveled outside the United States to El Salvador in October 1986 and returned in December 1986. Absent an explanation or other evidence, the applicant has not established that his absence from the United States did not disrupt any continuous residence and physical presence in the United States, or that his absence was due to emergent reasons. "Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988). Absent such evidence, the applicant has not shown that he was not absent from the United States and his absence from the United States did not disrupt his period of required continuous residence and physical presence in the United States.

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