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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: MAR 0 1 2012 OFFICE: SAN FRANCISCO, CA 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,

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, or *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 Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Mexico who claims to have resided in the United States since 1981. He filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on June 28, 2005.

On January 29, 2007, the director denied the application after determining that the applicant had failed to establish his eligibility for Temporary Resident Status. The director noted that in a November 30, 2006 Notice of Intent to Deny (NOID), he had requested that the applicant provide evidence demonstrating his continuous unlawful residence and continuous physical presence in the United States during the requisite period. The director also noted that the applicant did not respond to the NOID and denied the application for abandonment. It is noted, however, that the director did not inform the applicant that he was entitled to file an appeal with the AAO.

On March 18, 2011, the director issued a new Notice of Decision denying the application and informing the applicant that he may appeal. The director noted that the applicant had not established that he resided in the United States in continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director also noted that the applicant indicated in his statement that he had been absent from the United States from November 1981 through February 1982, thereby indicating that the applicant had a single absence of over 45 days from the United States during the requisite period and had failed to maintain his continuous residence. The director determined, therefore, that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has provided sufficient evidence to establish his eligibility for Temporary Resident Status. The applicant submits some of the same evidence previously provided.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

[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).

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *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 applicant 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 first issue in this proceeding is whether the applicant had a single absence that exceeded 45 days, and therefore failed to maintain continuous residence in the United States.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988).

We note that the record indicates that the applicant stated that he had departed the United States for Mexico in November 1981, and returned in February 1982. However, we cannot determine the length of this period of absence as the record does not include the date in February 1982 when the applicant returned to the United States. Therefore, we cannot conclude from the record that the applicant had a single absence that exceeded 45 days that would disrupt his continuous residence during the requisite period beginning from January 1, 1982.

The next issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The applicant asserts that he is unable to provide sufficient supporting documentation to establish his continuous residence as his documents were destroyed about 10 years ago in an apartment fire where he resided. The applicant's assertion is not persuasive. The applicant does not provide any information, such as evidence of the fire damage, or a list and description of the documents which he claims were burnt. It cannot be discerned, therefore, whether duplicates could be obtained for these documents, whether the information in the documents could be reconstructed, or whether the documents have probative value. The AAO cannot, therefore, accept the applicant's mere assertions that the documents that were in the applicant's apartment were destroyed and cannot be reproduced and are critical to establish the applicant's case. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14

I&N Dec. 190 (Reg. Comm. 1972)). The AAO will, therefore, determine this appeal based on the record of proceeding.

The record contains the following evidence submitted by the applicant:

Letters of Employment

1) A letter of employment, dated November 18, 2010, from [redacted] stating that from January 1981 to the end of 1983, "on and off," and from January 1988 until December 1988, the applicant did landscaping maintenance on his property.

2) A letter of employment, dated April 9, 2005, from an unidentified person who signed as a "Co-Owner" [redacted] stating that from March 15, 1984 until November 26, 1987, the applicant worked at the farm as a strawberry picker and laborer.

It is noted, however, that the affiants do not provide details, such as the location where the applicant had been employed, or the dates when the employment commenced and ended. In addition, the letters failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, are therefore, not probative as evidence of the applicant's employment as they do not conform to the regulatory requirements.

Statements of Earnings

The record includes five (5) earnings statements from [redacted] three (3) of which indicate payroll payments to the applicant in 1984, and two (2) show a payment in 1987. One of the statements is dated August 7, 1987. The remaining statements, however, are not probative of the applicant's employment as they do not indicate dates of issuance or employment.

Affidavits & Letters:-

1) An affidavit from [redacted] dated November 2, 2010, attesting that he and the applicant came from the same town and that between 1985 and 1988 he and the applicant were employed by [redacted] picking strawberries. [redacted] also attests to the applicant's character.

2) An affidavit from [redacted] dated May 16, 2005, attesting to having known the applicant to have resided in the United States since 1987, and that he and the applicant worked together picking strawberries. He also attests to the applicant's character.

3) A May 30, 1987 statement from [redacted] stating that the applicant appears eligible

for Legalization adjustment and is authorized to work without presenting documentation until September 1, 1987.

These affidavits and letter do not establish the applicant's continuous residence. [redacted] attests to knowing the applicant to have resided in the United States from 1985 to 1988, and [redacted] attests to the applicant's residence in the United States since 1987. The affiants do not provide details. It is noted that the affiants do not indicate dates when the applicant's residence commenced and how they have knowledge of his residence in the United States. [redacted] letter does not indicate the basis for his conclusion that the applicant appeared to have been eligible for Legalization adjustment, nor does he describe the evidence he evaluated in reaching his determination, and does not indicate the period of the applicant's employment or residence in the United States. As such, these affidavits and letters are of little evidentiary value in establishing the applicant's continuous residence during the requisite period.

Photographs, Envelope & Receipt

The record includes copies of two (2) photographs which the applicant states depicts him in [redacted] on January 6, 1983, and at the [redacted] in March 1984. However, we cannot determine when and where any of the photographs were taken. As such, the photographs are of little evidentiary value in determining the applicant's continuous residence.

The record also includes an envelope, stamped in May 1987 and a Travelers Express Money Order receipt, dated June 3, 1987. Beyond indicating the applicant's presence in the United States in May 1987 and in June 1987, these documents are of little value in determining the applicant's continuous residence.

In addition, the record of proceedings contains a letter, dated April 8, 2005, from [redacted], stating that the applicant is not a registered member and had been requested by the applicant to attest that he had been attending parish services there irregularly for several years.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from [redacted] does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of

the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

The remaining documents in the record are dated after 1988. As such, they are not probative of the applicant's continuous residence period during the requisite period.

The complete lack of reliable evidence casts doubt on whether the applicant has resided in the United States since 1981, as he claims. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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