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

L1

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: AUG 04 2008

MSC 06 096 12777

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. 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, California. 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, on December 27, 2005. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on November 8, 2006. Upon review of the record including the applicant's testimony, the director denied the application on December 14, 2006. On appeal, the applicant provides a brief statement.

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 applicant attempted to file the application. 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 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States in May 2002. The applicant listed his addresses for the pertinent time period as: [REDACTED], Lawndale, California from 1981 to 1984; [REDACTED] Glendale, California from 1984 to November 1986; [REDACTED] Lawndale, California from January 1987 to February 1987; and [REDACTED], Somis, California from February 1987 to December 1988. The applicant listed his employment for the pertinent time period as: a carpenter for Boyd Furniture Company from 1983 to 1984; an assembler for Caltex Company from 1984 to 1986; an agricultural laborer for New Grower's Nursery from February 1987 to December 1988. The applicant listed his absences from the United States during the pertinent time period as: November 1982 to January 1983; and November 1986 to January 1987. The applicant's date of birth is June 29, 1965.

The record also contains information from the applicant's interview on November 8, 2006. In a translation of the applicant's handwritten sworn statement, the applicant declared that he entered the United States in May 1981; that he left the United States in November 1982 and returned to Mexico until May 1983; and that he left the United States in November 1986 and returned in January 1987.

The record also includes the following information submitted to establish the applicant's continuous residence in the United States for the applicable time period:

- A December 6, 2005 affidavit signed by [REDACTED] who declares: that she is the applicant's sister; that the applicant lived with her and her husband from May 1981 to 1984 at [REDACTED] in Lawndale, California; that the applicant worked with the affiant's husband making furniture; that the applicant started working for Boyd Furniture Company under the name [REDACTED] in 1983; that the applicant started working for Caltex Company under the name [REDACTED] in May 1984 to November 1986; and that the applicant moved in with his and affiant's

brother in 1984 and lived with him until 1986 and then, after a trip to Mexico, lived with the affiant and her husband from the beginning of 1987.

- A December 6, 2005 affidavit signed by [REDACTED] who declares: that the applicant is his brother; that the applicant lived with him from 1984 to 1986 at 510 [REDACTED], Glendale, California; that the applicant had previously lived with the affiant's sister; and that the applicant had worked with the applicant's sister's husband making furniture from 1981 to 1983.
- A November 14, 2005 affidavit signed by [REDACTED] who declares: that he arrived in the United States in December 1985; that he has known the applicant for 18 years; that he worked with the applicant at New Growers Nursery during 1987; and that the applicant lived with him from February 1987 to December 1988.

The record also includes photocopies of: receipts and checks dated in 1984, 1985, and 1986 but only one includes the name of the applicant as the issuer or receiver; a postal receipt dated May 31, 1986 with the applicant's name; and an August 6, 1983 money order receipt with the applicant's name; a photocopy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to [REDACTED] at [REDACTED] in Lawndale, California from Boyd Furniture company; a photocopy of the first page of an IRS Form 1040A, U.S. Individual Income Tax Return, completed for [REDACTED]; and photocopies of pay stubs issued to [REDACTED] for the periods ending May 14, 1983 and May 28, 1983.

The director determined on December 14, 2006 that the applicant's verbal and written sworn testimony that he had left the United States in November 1982 and had not returned to the United States until May 1983 exceeded the 45-day single trip absence allowance; and that this trip and the applicant's November 1986 to January 1987 together exceeded the 180-day cumulative absence allowance.

On appeal, the applicant states that he was very nervous in the interview and could not remember the exact days of his absence. The applicant claims on appeal: that he departed the United States in the last week of November 1982 and returned to the United States immediately on the second day of January 1983; that he did not start to work until May 1983; that he departed the United States again on the last weekend in November 1986 and returned the first Monday of January 1987; and that neither of his absences during the pertinent time period exceeded 45 days.

The AAO has reviewed the affidavits submitted and does not find them probative in this matter. The AAO finds that the two affidavits submitted by the applicant's family members do not provide the necessary detail describing the applicant's entry into the United States, how the applicant first came to live with his sister, or provide information of the exact nature of work that the applicant, a fifteen/sixteen-year old, performed from 1981 to 1983. In addition, the AAO does not find sufficient evidence in the record to establish that the applicant used an alias when working for Boyd Furniture Company in 1983 or worked for Caltex Company under the name [REDACTED] from 1984 to 1986. Neither the applicant's brother nor sister provide sufficient detail of the circumstances and events surrounding the applicant's initial entry into the United States and their subsequent interaction with the applicant while he purportedly lived with them to establish the veracity of the affiants' statements

regarding the applicant's continuous unlawful presence in the United States for the requisite time period. Similarly, the November 14, 2005 affidavit signed by [REDACTED] provides a conclusory statement that he worked with the applicant at New Growers Nursery during 1987 and that the applicant lived with him from February 1987 to December 1988. The affiant does not provide the necessary detail that would substantiate the broad statements provided. These affidavits have only minimal probative value relevant to the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the duration of the requisite time period.

The AAO has also reviewed the photocopies of receipts, checks, a money order receipt, and the tax records for [REDACTED] but does not find these photocopies amenable to verification. The majority of the documentation does not include the applicant's name or discernable dates; thus is not evidence of the applicant's residence in the United States. Moreover, these photocopies are indicative of one-time events and do not include the totality of the requisite time period.

Further, the applicant's inconsistent testimony at his interview and on appeal regarding his absences from the United States has not been adequately resolved. The AAO acknowledges that the applicant may have been nervous at his November 8, 2006 interview. However, he signed a sworn statement written in his own handwriting indicating that he left the United States in November 1982 and returned to Mexico until May 1983, an absence of almost six months. Such a sworn statement is not overcome by the applicant's recanting of this sworn testimony on appeal. An applicant for temporary resident pursuant to Section 245A must establish continuous unlawful residence for the entire requisite time period. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, 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 for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's acknowledged absence from the United States for almost six months, even if accepting that the applicant entered the United States prior to January 1, 1982, a fact that has not been established in the record of this matter, exceeds the 45 days used to determine whether the absence was brief and casual. The applicant has not demonstrated that his return to Mexico and failure to return to the United States within 45 days was due to an emergent reason. As a result, the applicant is also found not to have resided continuously in the United States throughout the requisite period for this reason.

When viewed as a whole, the information in the record lacks credibility. The AAO finds that the documentation submitted lacks probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient documentation and the applicant's inconsistent statements and testimony comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons noted. The absence of credible and probative 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. The applicant has failed to

meet his burden of proof and failed to establish continuous residence 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 on this basis. The appeal will be dismissed.

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