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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE:

MSC 05 090 10165

Office: DENVER

Date:

OCT 01 2008

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.

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, Denver. 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. 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted. The applicant notes that he was nervous at his legalization interview and became confused about dates and employment. He further notes, with regard to witness statements submitted, that many of the witnesses no longer reside where they first met him, and that they may have given inaccurate information due to the passage of time since the events stated by them in their statements.

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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

#### WITNESS STATEMENTS

- submitted two statements in support of the applicant’s claim.

The first statement is notarized and dated August 7, 2004. In that statement [REDACTED] states that he met the applicant in February of 1980, and that the applicant has been in the United States ever since. The witness states that he and the applicant are good friends and that even when the applicant lived in California, the applicant came to Colorado on three occasions to visit.

The second statement submitted by [REDACTED] was sworn to on July 22, 2006 and states that it is supplemental to his first statement. In that statement [REDACTED] states that his family has known the applicant’s family since the applicant was a child in Mexico. Mr. [REDACTED] states that he later immigrated to the United States, but would keep in touch with the

applicant's family. The witness states that the applicant would call him occasionally, visited him in Colorado and celebrated special occasions with him. The witness further states that he has personal knowledge of the applicant's continual presence in the United States because he communicates regularly with the applicant, and because he still communicates with the applicant's family about the applicant's whereabouts.

- [REDACTED] submitted two statements on behalf of the applicant.

The first statement submitted by the witness was sworn to on August 20, 2004. In that statement the witness states that he has known the applicant for life, and that after the applicant's arrival in the United States in 1979 the applicant settled in California and would travel frequently to Colorado to visit. The witness states that the applicant subsequently (around 1994) moved to Colorado and that the two would "occasionally get together."

The witness submitted a second statement that is neither dated, notarized nor sworn to, but states that the statement is supplemental to his previous statement. In that statement the witness states that: he has known the applicant since childhood; his family and the applicant's family have been in contact throughout the years (even before the applicant's arrival in the United States in 1979); the applicant frequently visited when he was in town; he is in close contact with the applicant's brother and mother, and therefore, knows the applicant's whereabouts; and the applicant moved to Colorado in 1994 since then the two talk by telephone and occasionally get together.

- [REDACTED] submitted two statements on behalf of the applicant.

The first statement is notarized and states that [REDACTED] was employed as the Head Chef of Café Francais Restaurant in Burbank, CA from 1979 – 1996, and that during that time period he worked directly with the applicant from 1987 – 1989 on a daily basis.

[REDACTED] submitted a second statement that was sworn to on July 23, 2006, and supplements his prior statement. In this statement [REDACTED] states that he worked for Café Francais Restaurant in Burbank, CA from 1979 – 1996, and that he worked with the applicant from 1987 – 1989. [REDACTED] further states that there are no employment records verifying the applicant's employment because he was undocumented and paid in cash.

- [REDACTED] submitted two statements on behalf of the applicant.

The first statement is notarized and dated July 2, 2004. In that statement [REDACTED] states that he has known the applicant since 1981 and that he can attest to the applicant's integrity.

The second statement from [REDACTED] was sworn to on July 24, 2006 and supplements his prior statement. In this statement [REDACTED] states that he met the applicant in 1981 when

the two played on the same baseball team. The two became friends, saw each other frequently and have maintained contact.

- submitted three statements on behalf of the applicant.

The first statement is neither sworn to nor notarized, and is dated December 8, 2004. Mr. [REDACTED] states that: he has known of the applicant's presence in the United States since 1980 (the year the witness states he arrived in the United States); the two have been friends since childhood; he resided with the applicant in the applicant's apartment at [REDACTED] "for awhile;" on or about May of 1987 he gave the applicant a ride to apply for legalization, but that the application was not accepted because the applicant had traveled outside the United States.

The second statement was sworn to by [REDACTED] on July 27, 2005, and states that he accompanied the applicant in May of 1987 to submit a legalization application.

The third statement was sworn to by [REDACTED] on July 21, 2006, and supplements an affidavit executed on "July 2, 2004" (the [REDACTED] statement in the record of proceedings is dated December 8, 2004.) [REDACTED] states that he first became acquainted with the applicant as a child. The witness states that he arrived in the United States in 1980 and lived with the applicant at [REDACTED]. The witness states that the applicant moved out in 1981, but that he continued to live there. The applicant then moved back into the residence in 1984. The applicant further states that he and the applicant socialized together and have maintained contact via telephone. Finally, the witness states that he went with the applicant to file the applicant's legalization papers in May of 1987, but the application was not accepted because the applicant had traveled outside the United States.

- [REDACTED] submitted a statement that is neither sworn to nor notarized wherein he states that the applicant came to Mexico in 1987 due to health concerns for the applicant's mother.
- [REDACTED] submitted two statements on behalf of the applicant.

The first statement is notarized and dated August 24, 2004. The witness states therein that he met the applicant in December of 1981, and that the applicant has been in the United States since that time. The witness states that he and the applicant are friends, and that the two shared an apartment in Denver, CO.

The second statement submitted by [REDACTED] was sworn to on July 22, 2006. The witness states therein that in 1981 the applicant came to visit his sister, who was [REDACTED] neighbor. The witness states that the applicant would come to Colorado once or twice a year to visit, staying from one to three months, and during those visits the witness and the applicant would socialize. [REDACTED] states that the applicant moved to Colorado in 1994 and that the two frequently visit.

- [REDACTED] submitted a statement that is neither sworn to nor notarized. The witness states therein that he is the Municipal President of [REDACTED], and that the applicant was living in the United States and returned to Mexico in 1987 because of his mother's health.
- [REDACTED] submitted a statement that is neither sworn to nor notarized. The witness states therein that he has known the applicant since the applicant's adolescent years, and that the applicant immigrated to the United States in 1979. Dr. [REDACTED] further states that the applicant returned to Mexico in 1987 due to health concerns for a relative.
- [REDACTED] submitted a statement that is neither sworn to nor notarized. [REDACTED] states therein that he represents the applicant and his family in legal matters, and that the applicant has lived in the United States since 1979, having returned to Mexico on one occasion in 1987 due to a family illness. The witness states that the births of the applicant's children were registered in Mexico by the applicant's wife because all that is required "in this place" is the presentation of a marriage certificate.
- A notarized statement was submitted by the applicant and [REDACTED] on July 2, 2004 wherein it was stated that the applicant worked for a restaurant called "[REDACTED]" in Burbank, CA from September of 1980 until December of 1983.

[REDACTED] issued a supplemental statement sworn to on July 23, 2006 wherein he states that he meant to say in the previous statement (July 2, 2004) that [REDACTED] was the owner of a restaurant named "[REDACTED]", and that he worked with the applicant at that facility from September of 1980 through December of 1983.

These two statements are contradictory to a sworn statement issued by [REDACTED] on July 27, 2005. In that statement [REDACTED] states that he was **the owner of** [REDACTED] and that the applicant was an employee of the restaurant from 1980 – 1983.

A supplemental sworn statement was then issued on July 24, 2006 by [REDACTED] (there is no explanation for the different spelling of the witness name between his first and second statement) wherein he states that his name is [REDACTED] and that he used to own a restaurant in Burbank, CA called [REDACTED] that closed in 1996 (a photocopy of an equipment account statement from S.E. [REDACTED] identifies the restaurant as "Le Montmartres Restaurant"). The witness states that the applicant worked as a busboy from 1980 – 1983 and was paid in cash (the applicant states on the Form I-687 that he worked as a dishwasher and prep cook). The witness offers no explanation as to why he was also known as [REDACTED]. It is further noted that the witness spells his name "a/k/a . . . [REDACTED]" in his July 24<sup>th</sup> sworn statement, but uses a different spelling for the name of the restaurant [REDACTED] in his July 27<sup>th</sup> sworn

statement. Those two spellings are also confused in the July 2, 2004 statement of the applicant and [REDACTED] for the restaurant name), and the July 23, 2006 sworn statement of [REDACTED] wherein he states that the restaurant owner's name is [REDACTED] and the restaurant is named [REDACTED].

The record contains no explanation for the inconsistencies noted.

#### ADDITIONAL EMPLOYMENT

- Guadalupe Escobedo issued two employment statements on behalf of the applicant.

The first statement is notarized and dated July 2, 2004 wherein [REDACTED] states that the applicant was employed by him as a gardener from January of 1981 until November of 1988. A second statement was sworn to on July 21, 2006 wherein the witness states that the applicant was employed part-time during the day, continuous from January of 1981 through November of 1988.

The above referenced employment statements are not deemed probative and are of little evidentiary value. 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 employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not provide the applicant's address during employment, show periods of layoff (or state that there were none), or declare whether the information attested to was taken from employment records or identify the location of any such records.

#### APPLICANT'S STATEMENTS

- The applicant issued a statement that is neither sworn to nor notarized dated December 6, 2004 wherein he states that he entered the United States without inspection in 1979. Upon arrival, the applicant states that he worked at a Chinese restaurant until 1980, worked as a gardener ("on the side") until 1988, at a restaurant called [REDACTED] from 1980 – 1983 and at Café Francais from 1987 – 1989. **The applicant further states that he traveled to Mexico in May of 1987, and that he was not permitted to apply for legalization upon his return to the United States because of his travel outside the United States without permission.**

The applicant issued a sworn statement on July 25, 2006 wherein he states that: he entered the United States in 1979; he traveled to Mexico in May of 1987 for approximately two weeks; and upon his return he attempted to apply for amnesty but was not permitted to do so because he had traveled outside the United States without permission.

Although the applicant has submitted several witness statements in support of his application, along with his own statements, he has not established his 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.

The referenced witness statements state generally how the affiants know the applicant, and that the applicant has resided in the United States for the requisite period, or some portion thereof. The witness statements provide no additional relevant information. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

#### ADDITIONAL EVIDENCE

- The applicant submitted photographs to establish his residency in the United States. The photographs are not sufficiently authenticated as to time and place to establish that they were taken of the applicant, in this country, during the requisite period.

The applicant submitted mailing envelopes in an effort to establish his residence in this country for the duration of the requisite period. Those envelopes are of little evidentiary value. For example, some of the envelopes list return addresses for the applicant that are inconsistent with the addresses listed by the applicant on the Form I-687. Another example of inconsistency comes from the statement of the applicant's witness [REDACTED]. In his statement dated July 21, 2006, [REDACTED] states that the applicant moved from his residence at [REDACTED] in 1981, and returned to live there in 1984. Several envelopes submitted by the applicant bear a post mark date and the Pass Ave. address during the time that the applicant did not supposedly live at that address. Further, none of the envelopes are addressed to the applicant in the United States, and simply bear his return address as proof of his residence in this country. The return addresses also bear different variations of the applicant's name.

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.