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

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FILE: [REDACTED]  
MSC-06-091-11830

Office: LOS ANGELES

Date: **SEP 15 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. 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 denied the application on January 25, 2007. The director found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that there were inconsistencies between the Form I-687 application and the employment letters submitted by the applicant. The director also found that some of the supporting documents appeared to have been altered.

On appeal, the applicant explains that he was employed by multiple employers during the same period. The applicant also denies altering any of the supporting documents. The applicant has not submitted additional evidence in support of his appeal.

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 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. 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) 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).

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 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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 30, 2005. Part #33 of the application asked applicants to list their employment in the United States since January 1, 1982. The applicant listed his employment during the requisite period as follows:

- [REDACTED] Trucking from 1981 until 1984,
- [REDACTED] Restaurant from 1984 until 1985,
- [REDACTED] Trucking from October 1985 until September 1986,
- [REDACTED] from 1985 until 1987, and
- [REDACTED] from 1988 until 1990.

In addition, the applicant submitted the following as proof of his employment during the requisite period:

- A written statement from [REDACTED] of [REDACTED] Produce Trucking Company. The statement is not notarized or dated. The declarant states that the applicant worked for [REDACTED] Produce Trucking Company from December 1981 until August 15, 1986. As noted by the director, the applicant did not list this employment on his Form I-687 application. On appeal, the applicant states that this was only seasonal employment and that he was working for another company at the same time. However, this does not explain why the applicant did not list this employment on his Form I-687 application. Further, the statement from [REDACTED] is deficient in that it does not comply with the

regulation relating to past employment records. For example, the statement does not provide the applicant's address at the time of employment, does not describe the applicant's job duties and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this statement will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A written statement from [REDACTED] dated March 25, 1988. The declarant states that he employed the applicant from April through October 1985 and from May through September 1986. The applicant listed his employment with [REDACTED] Trucking, located in Lindsay, California, on his Form I-687 application. The applicant indicated on his Form I-687 application that he was residing in Inglewood, California during this time. As noted by the director, Inglewood, California and Lindsay, California are not within commuting distance. This detracts from the credibility of the applicant's claims. Further, the statement from [REDACTED] is deficient in that it does not comply with the regulation relating to past employment records. For example, the statement does not provide the applicant's address at the time of employment, does not describe the applicant's job duties and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this statement will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A photocopy of a pay stub dated November 3, 1982. The pay stub bears the applicant's name, but does not list the employer's name. The applicant was not able to provide an original copy. This document cannot be verified and will therefore be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a photocopy of a Certificate of Merit from Inglewood Adult School dated March 26, 1983. The applicant has not provided an original copy of this certificate. The director noted that the date of the document appeared to have been altered. Specifically, the year typed on the document—1983—appears to have been typed separately from the month and day. Although the applicant denies having altered the document, he has not provided any corroborating evidence to establish its authenticity such as school records or a letter from a school official. Without such evidence this document will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the applicant submitted a copy of an identification card issued to the applicant by the California Department of Motor Vehicles in June of 1987. The applicant also submitted a copy of his W-2 Wage and Tax Statement for 1988 and a copy of his Form 1040 Individual Income Tax Return for 1988. Although these documents provide some evidence of the applicant's residence in the United States in 1987 and in 1988, they are insufficient to establish his residence in the United States throughout the entire requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of 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 contradictory information in the record and 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 for the requisite period 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.