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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

APR 06 2009

MSC 05 214 10691

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.

John F. Grissom

Acting 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. 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, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that the affidavits and testimony he gave verify that he was in the United States during the appropriate time period and is otherwise qualified for relief.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and a letter from his previous employer, and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

During his interview on October 31, 2006 for temporary residence status under section 245A of the Act, the applicant stated that he entered the United States without inspection on September 1981. However, on the applicant’s Form I-589 application, Request for Asylum in the United States, which is a part of the record of proceeding, he stated he entered the United States without inspection through San Ysidro, California, on November 8, 1985. On his Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B), he stated at part 19 that he first arrived in the United States without inspection on November 9, 1985 by walking across the Mexican border with some friends.

The record also contains two of the applicant’s Form G-325A dated September 22, 1997 and May 12, 1998, signed by the applicant and submitted in connection with his asylum and cancellation of removal applications. Here, the applicant claims that his last address outside the United States was

[REDACTED], Queretaro, Mexico<sup>1</sup>, from April 1967 to November 1985. This information is inconsistent with the applicant's claim that he entered the United States illegally on September 1981. He also claims on both his Forms G-325A that his residence in the United States was [REDACTED] Santa Ana, California, from November 1985 until December 1989 and on the 1997 Form G-325A that he was employed as a cook at [REDACTED], Irvine, California, from October 1986 to July 1988. However, the applicant lists his place of residence on his Form I-687 application as [REDACTED] Mendota, California, from 1981 through April 1985 and [REDACTED] Santa Ana, California from June 1985 to December 1989. His Form I-687 application also shows that he was employed by [REDACTED], Mendota, California, performing agricultural work from May 1985 to May 1986; [REDACTED], Irvine, California, as a cook from June 1986 to March 1986;<sup>2</sup> [REDACTED], Costa Mesa, California, as a cook from April 1986 to July 1986 and the [REDACTED], Irvine, California, as a cook from August 1986 to July 1989. The applicant has not explained how he was living and working in the United States in 1981 when his Form G-325A reflects his address as Queretaro, Mexico, until November 1985.

The applicant also filed an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B), which reflects his residence as [REDACTED] Santa Ana, California, from November 1985 until January 4, 1989 and his employment at [REDACTED] Costa Mesa, California, as a cook from February 15, 1986 to April 5, 1986 and at [REDACTED] Costa Mesa, California, as a cook from April 6, 1986 to August 14, 1986. The applicant's employment at [REDACTED] and [REDACTED] Costa Mesa, California, is during the same time period the applicant claims to be employed by [REDACTED] in Mendota, California, in connection with the current Form I-687 application.

During his removal proceeding on October 29, 1998, the applicant testified that he came to the United States on November 9, 1985 and that he never left the United States since coming in 1985. This statement is inconsistent with the applicant's claim that he entered the United States in 1981. Further, on the applicant's Form I-687 application he claims two absences from the United States, one in November 1985 to visit family in Mexico and the other from October 1987 to November 1987 due to an emergency in Mexico.

The inconsistencies regarding the dates the applicant initially entered and resided continuously in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

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<sup>1</sup> The Form G-325A reads Queretaro, USA, which appears to be a typographical error. The city and country of birth of the applicant and his parents is shown at other parts of the record to be Queretaro, Mexico.

<sup>2</sup> The date on Form I-687 reads March 1986, which appears to be a typographical error.

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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant's remaining evidence that is relevant to the requisite period consists of a copy of his 1986 - 1988 income tax returns, his 1986 and 1987 Form W-2, Wage and Tax Statements, pay stubs from different employers dating 1986-1988, the earliest stub dated March 3, 1986 from [REDACTED] an identification card from the Department of Motor Vehicles (DMV) in California and copies of bill payments due to A-L Financial Corporation. This evidence does not establish the applicant's continuous residence throughout the requisite period.

The letter from [REDACTED], Mendota, California, dated January 8, 2006, signed by the president, [REDACTED], states that the applicant was employed by their farm labor contracting firm from November 1981 through April 1985 for a total of 100 days for each year thinning, weeding and harvesting tomatoes in the Central San Joaquin Valley. [REDACTED] states that he is unable to provide payroll records since such documents were completely destroyed in a fire. However, Mr. [REDACTED] has not provided any evidence to substantiate his assertion. Moreover, [REDACTED] did not explain how he was able to confirm when the applicant worked for the company other than stating that he recognized the applicant. 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. Since the letter does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

Beyond the decision of the director, the applicant appears to be inadmissible to the United States and thus ineligible for the benefit. Section 245A(a)(4)(A) of the Act requires an applicant to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary

resident status. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii) renders inadmissible an applicant who is ordered removed from the United States and who seeks admission within 10 years. The record reflects that the Board of Immigration Appeals granted the applicant voluntary departure on or before October 27, 2002 with an alternate order of deportation. Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record does not indicate that the applicant ever requested or was granted such a waiver. For this additional reason, the application may not be approved.

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