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U.S. Department of Homeland Security  
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FILE: [REDACTED]  
MSC-06-049-11266

Office: SAN DIEGO

Date: JUN 02 2009

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, San Diego. 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 (together comprising the I-687 Application). The director denied the application, stating that the applicant had failed to submit any evidence to support his application.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to support his claim of continuous residence in the United States since before January 1, 1982. The record contains some letters and several unsigned and undated statements in support of the applicant's claim.

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).

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 burden is upon the applicant to prove 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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.

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 (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 has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided continuously in the United States since before January 1, 1982 and throughout the requisite period.

As evidence of his continuous residence in the United States since before January 1, 1982 the applicant submitted five undated and unsigned statements from his family members in Mexico. In response to the notice of intent to deny the application, the applicant provided five additional letters from his former employers in the United States and two pictures.

The applicant claims that the two pictures were taken in the United States during the requisite period. However, the pictures, by themselves, have no weight as evidence of the applicant's residence in the United States during the requisite period. Other than what the applicant wrote on the pictures, they do not show when and where they were taken.

All of the applicant's family members in their undated and unsigned statements indicate that they know that the applicant has been residing in the United States since 1980. They further state they regularly visited the applicant in the United States and frequently talked with him on the telephone. None of them, however, provides detailed information as to where the applicant resided in the United States, whether he went to school or worked, or how he supported himself financially during the requisite period. 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. Since the statements lack relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's continuous residence in the United States since before January 1, 1982.

Similarly, both [REDACTED] and [REDACTED] in their letters claim to have known the applicant since 1980 but offer no specific detail about how they first met him in the United States, how they dated their acquaintance with him, or where the applicant resided throughout the requisite period. Their claim is not persuasive and their letters are not probative as evidence of the applicant's residence in the United States since before January 1, 1982.

The letters from Marieta's Fine Mexican Food, La Posada del Sol Restaurant, and Por Favor Restaurant are also not probative. The authors fail to include specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the authors fail to provide the applicant's address at the time of his employment, the exact period of the applicant's employment and layoffs, the description of the applicant's duties with the company, the employment records from which the information was taken, and the place where such records are located and whether United States Citizenship and Immigration Service (USCIS) may have access to the records.

The applicant also did not specifically list at part #30 of his Form I-687 all of his residences in the United States since he arrived in the United States. Nor did he state at part #33 of his Form I-687 all of his employment. The lack of detail in the application seriously undermines the applicant's credibility and claim that he has resided in the United States since before January 1, 1982.

The lack of detail in the evidence and the application coupled with the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract 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. Given the lack of credible supporting documentation, it is concluded that 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.