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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 1 2 2009
MSC-06-031-19425

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 after determining 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 noted that the applicant, in his Legalization Front-Desking Questionnaire, dated December 30, 2000, stated that he was not allowed to file an amnesty application because he had been previously deported. The director denied the application finding that the applicant had not met his burden of proof and that he 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 the person who prepared his Form I-687 application information incorrectly used the word deported when the word should have been departed and that he has never been deported from the United States. The applicant submits as evidence a copy of his Legalization Front-Desked Questionnaire. He also submits an affidavit from [redacted] in which he states that he assisted the applicant in completing his Form I-687 application and Front-Desked Questionnaire and that he incorrectly wrote the word "deported" and should have written the word "departed." [redacted] states that the applicant never told him that he had been deported from the United States.

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) 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).

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 AAO notes that the record of proceeding does not contain evidence that the applicant was deported from the United States, and therefore, that finding of the director will be withdrawn. The AAO will review the remaining evidence to determine the applicant's eligibility for temporary resident status.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant indicated on his current Form I-687 application at part #32 and testified during his interview that he entered the United States in January 1980 and was absent from the United States from October 1983 to November 20, 1983, and from June 1987 to August 1987. The applicant testified under oath during his interview that he was married in Mexico in 1983 and

that his wife first came to the United States in February 1985. The applicant also testified that he had three children born in Mexico in March of 1985 and June of 1986. The applicant submitted a copy of his oldest child's Mexican birth certificate which shows that she was born on March 23, 1985 and that the applicant was present and signed the birth certificate. The applicant has failed to specify his absences from the United States on the Form I-687 and in his testimony to explain how he fathered his oldest child and was present at the time of her birth in Mexico.

The applicant submitted copies of receipts, United States Postal Service express mail receipts, bank statements, pay stubs, utility bills, postmarked envelopes, and a retirement survey that are dated subsequent to the requisite period, and therefore, are not relevant to the applicant's claim of continuous residence. The applicant submitted general money order receipts dated 1986 through 1988; however, neither the applicant's name nor his address appears on the receipts and cannot be considered as evidence of his presence in the United States during the requisite period.

The applicant submitted a letter of employment verification from Treasurer-Tax Collector in which La Centro Amercano indicated that the company employed the applicant from May 1988 to December 1991 as a self-employed driver. The letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the applicant's address during the employment period or whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). It is noted that the majority of the applicant's alleged employment with the company was outside the requisite period.

The applicant submitted the following attestations:

- Affidavits from and in which they stated that they have known the applicant since 1981.
- Affidavits from and in which they stated that they have known the applicant since 1986.

Although affiants and state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and continuously resided in the United States throughout the requisite period.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he continuously resided in the United States for the requisite period. The affidavits are lacking in detail and probative value.

The absence of sufficiently detailed 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 applicant's reliance upon evidence that is lacking in detail and probative value and his failure to specify all of his absences from the United States, 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.