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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
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Services

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[Redacted]

FILE: [Redacted]
MSC 04 276 10243

Office: LOS ANGELES

Date: **NOV 23 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:

[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.

Perry Rhew
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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant submits additional documentation and requests that his application be approved.

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)(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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Documents titled [REDACTED] from [REDACTED] and [REDACTED]
2. An Affidavit of Witness statement from [REDACTED] who states he knows the applicant has resided in the United States since 1975.
3. An employment letter from [REDACTED] and a person with an indiscernible signature from [REDACTED] in Agoura Hills, California, who state the applicant worked for the corporation from 1980 to 1983.
4. An employment letter from [REDACTED] and [REDACTED] from [REDACTED] in Northridge, California, who state the applicant began work at the firm on November 3, 1983.
5. A money order receipt from the [REDACTED] of the Bank of America payable to “water and power” dated June 11, 1981.
6. A birth certificate for the applicant’s son [REDACTED] born to [REDACTED] in Mexico on December 24, 1982.
7. The applicant’s U.S. Postal Service Money Order customer’s receipt, showing he sent an article to a person in Arizona on April 30, 1983.
8. Envelopes addressed from the applicant in California to [REDACTED] in Mexico dated July 1, 1983, June 30, 1984, July 18, 1985, October 20, 1986 and September 1, 1987.
9. The applicant’s pay slips from Classic Masonry in Northridge, California, with check dates August 3, 1984, August 10, 1984, August 24, 1984, June 20, 1986, June 27, 1986, October 16, 1986, February 6, 1987, February 26, 1987 and March 6, 1987.

10. A birth certificate for the applicant's son [REDACTED] born to [REDACTED] in Mexico on September 27, 1984.
11. A printout of the applicant's FICA earnings showing he accumulated FICA earnings for 1986, 1987 and 1997 through 2001, carrying the stamp of the San Fernando, California, Social Security Administration District Office dated March 28, 2007.
12. The applicant's receipt for an appointment dated August 1, 1987 and his invoice for his medical appointment on September 17, 1987, at an office in San Fernando, California.

The documents titled "[REDACTED]" from [REDACTED] and [REDACTED] (Item # 1 above) are not accompanied by a certified English translations as required by the regulations at 8 C.F.R. § 103.2(b)(3) and will not be accorded any weight in this proceeding. [REDACTED] (Items # 2) claims to have known the applicant for a substantial length of time, in this case since 1975. However, his statement is not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statement has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. Additionally, the employment verification letters (Items #3 and #4) do not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The money order receipt (Item # 5) is not identified to the applicant. The birth certificates for the applicant's son [REDACTED] (Item # 6) and [REDACTED]

(Item # 10) suggest that the applicant was residing in Mexico early in 1982 and 1984 when his sons were conceived. The applicant's Form I-687 lists no absences from the United States during the requisite period which included 1982 and 1984. Based on the other evidence (Items # 7 through # 9, # 11 and # 12) the AAO acknowledges the applicant resided in the United States during part of the requisite period beginning in 1983.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence

during the requisite period. The applicant's asserted residential history on his Form I-687 is accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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