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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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FILE: [redacted] Office: LOS ANGELES Date: OCT 27 2009
MSC 05 222 10655

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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.

for 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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that he has resided in the United States since September 1981 and that the documentation of record establishes that fact.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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.* 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.

The regulations provide an illustrative list of documents – which includes affidavits and "any other relevant document" – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since September 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on May 10, 2005. As evidence of his residence in the United States during the 1980s the applicant submitted the following documentation:

- An affidavit by [redacted] in Mendota, California, dated January 19, 2005, stating the applicant was employed by his farm labor contracting company from October 1981 to April 1985, for an estimated 100 days each year, performing duties such as thinning, weeding, and harvesting tomatoes in the San Joaquin Valley. According to [redacted] the company's payroll records were destroyed in a fire.

  Another affidavit by dated January 31, 2005, stating the applicant was employed by his farm labor contracting company from May 1, 1985 to May 1, 1986, for a total of 105 days, with duties and location as listed above.

- An affidavit by [redacted], a resident of Van Nuys, California, dated February 4, 2005, stating that he met the applicant in 1984 and knows that he has been a continuous resident of the United States since then.

At his interview on January 23, 2006, the applicant submitted the following additional documents:

A notarized letter from [redacted], a resident of Pico Rivera, California, dated January 18, 2006, stating that the applicant came from Mendota to live with him

on in Los Angeles from 1986 to 1992, at which time he moved across the street.

A notarized letter from [redacted] a resident of Long Beach, California, dated January 20, 2006, stating that he met the applicant in 1981, who lived with him on [redacted] in Long Beach for 3 or 4 weeks before moving north to Mendota to work in the tomato fields. [redacted] indicates that he lost contact with the applicant until 1985 or 1986, when the applicant was back in Los Angeles.

On January 27, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's continuous residence in the United States during the requisite period for temporary resident status under section 245A of the Act. The applicant was granted 30 days to explain discrepancies in the record and submit additional evidence.

The applicant did not respond to the NOID, whereupon the director issued a Notice of Denial on August 15, 2006. The director stated that the application was being denied on the ground of abandonment. A denial on this ground is not appealable, but the director advised the applicant that he could file a motion to reopen within 33 days.

A motion to reopen was duly filed, together with some previously submitted documentation. The director thereupon granted the applicant's motion to reopen.

On October 11, 2007, the director issued a Notice of Decision, once again denying the application. The director reviewed the evidence of record and determined that it failed to establish the applicant's continuous residence in the United States during the requisite period to qualify for temporary resident status under the Act.

The applicant filed a timely appeal (Form I-694), reiterating his claim to have lived in the United States since September 1981 and asserting that the documentation he submitted establishes his continuous residence in the country since then.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year

application period for legalization that ended on May 4, 1988. The AAO determines that he has not.

The applicant has submitted no contemporary documentation from the 1980s demonstrating that he resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since 1981, it is noteworthy that he is unable to produce a solitary document dating from that decade.

The affidavit and notarized letters from , and have minimalist formats with little personal input by the affiants. Considering how long each of the individuals claims to have known the applicant, it is remarkable how little information they provide. They offer few details about the applicant's life in the United States during the 1980s, or the nature and extent of their interaction with him. Two of the individuals indicated that they knew the applicant as of 1984 and 1986, respectively, and therefore cannot attest to his residence in the United States in prior years back to 1981. The other individual indicates that he had no contact with the applicant between 1981 and 1985 or 1986, and therefore cannot attest to his residence in the United States during the years 1982-1984. Neither the affidavit nor the notarized letters are accompanied by any documentary evidence – such as photographs, personal letters, and the like – of the applicant's personal relationship with any of the three individuals in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit and notarized letters of and have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

As for the two affidavits by who claims that the applicant was a farm laborer in California during the years 1981-1986, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must (1) provide the applicant's address at the time of employment; (2) identify the exact period of employment; (3) show periods of layoff; (4) state the applicant's duties; (5) declare whether the information was taken from company records; and (6) 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.

The affidavits from do not meet all of these criteria. They do not provide the applicant's address at the time of employment, and do not show the applicant's periods of layoff, which would clearly have existed for a farm laborer who, as **claims, worked around** 100 days a year. also states that payroll records are no longer available. Thus, there are no records to verify that the applicant was employed as a farm laborer during the years **1981-1986. Even if the AAO accepted the affidavits as credible evidence that the** applicant performed some farm labor during those years, they would not necessarily show that the applicant maintained continuous residence in the United States during that time. Due to the infirmities discussed above, the affidavits by have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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