U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

DATE: APR 06 2012 Office: HOUSTON FILE: [redacted]

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 approved on November 22, 2006. The applicant's temporary resident status was subsequently terminated 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 application was approved on November 22, 2006. The director terminated the applicant's temporary resident status on July 27, 2011, finding that the applicant did not submit sufficient evidence to establish that he entered the United States before January 1, 1982 and lived in the United States during the requisite period.

On appeal, counsel states that applicant met his burden and established that he entered the United States before January 1, 1982 and lived in the United States during the requisite period.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See id.* and § 245A(a)(2)(A) of the Act.

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.

The issue in this proceeding is whether the applicant established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period.

The AAO notes that the affidavit for was notarized but not signed by the affiant and it relates to events after the requisite period. Therefore, this affidavit has no probative value.

The record contains two affidavits from stating that the applicant lived at her house from March 1982 to October 1986. On the affidavit, the affiant lists her address as In the Form I-687, the applicant lists his first address as

The record contains two affidavits from In her affidavit dated November 26, 1990, states that the applicant lived with her at states that the applicant paid her for room and board promptly. In her affidavit dated March 9, 2011, stated that the applicant lived with her at does not state that the applicant lived with her at any other time in the 2011 affidavit. In the Form I-687, the applicant states that he first entered the United States in August 1981 and he does not list any addresses before August 1981. Further, the applicant does not list the address at is inconsistent with the applicant's Form I-687 and states that the applicant lived with her in the United States from September 1977 to February 1978.

The record contains an affidavit from stating that he has known the applicant since March 1982 and that they were both members of and attended the states that the applicant became a member and left in September 1985. In the Form I-687, the applicant listed an affiliation with the from September 1982 to October 1990. is inconsistent with the applicant's Form I-687 and states that the applicant's affiliation with the

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 applicant submits competent objective evidence pointing to where the truth lies. 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 record also contains an affidavit from stating that she has been the applicant's friend since 1982. In her affidavit, does not state that she met the applicant in the United States, she does not provide any details of her interactions with the applicant in the United States, or state how she remembers when she first met the applicant.

The affidavits contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those

associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. 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. Upon review, the AAO finds that, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding contains several employer letters. The record contains an affidavit from stating that the applicant worked for him on a contract basis as a states that the applicant earned approximately $200 per week and lived at during his employment. The record contains an also states that there are no cancelled checks available. The record contains an affidavit on that was notarized but not signed by owner. The AAO will not consider this affidavit because it was not signed.

The letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter submitted by is notarized and provides the applicant's address at the time of employment and the applicant's dates of employment. The AAO notes that was contacted and stated that he had records of the applicant's employment, but the record contains no employment records from The letter submitted by is notarized and provides the applicant's the applicant's dates of employment and states that there are no employment records available. The employment letters submitted do not include any of the other required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record of proceeding also contains two letters from In his letters states that the applicant has been a member of the congregation since his baptism on September 12, 1982.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has

letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) because it does not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

Further, the AAO notes that the record also contains a certificate of baptism stating that the applicant was baptized at the As noted by the director in his notice of intent to terminate (NOIT), the certificate was issued on September 12, 1990. In response to the director's NOIT, counsel stated that the original certificate was not available and that the document submitted was a copy of the original listing the date that it was issued to the applicant.

In his termination, the director states that never mentioned that the applicant lived with him for five years. On appeal, counsel correctly states that affidavit did not state that the applicant lived with him. The AAO withdraws the director's statements regarding not mentioning that the applicant lived with him for five years.

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 on this basis. The director's decision terminating the applicant's temporary status is affirmed.

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