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**U.S. Citizenship
and Immigration
Services**

[REDACTED]

41

DATE: **JUN 07 2012**

OFFICE: LOS ANGELES, CA

[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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,

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, or *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 Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Mexico who claims to have resided in the United States since 1981. He filed an 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 September 15, 2005.

On August 18, 2011, the director denied the application after determining that the applicant had failed to establish his eligibility for temporary resident status. The director noted that the evidence provided, including affidavits which lacked sufficient detail, was insufficient to demonstrate the applicant's continuous unlawful residence and continuous physical presence in the United States during the requisite period. The director also noted that inconsistencies in the dates of the applicant's departures on his applications, and the dates of birth listed on the applicant's Form I-687 applications, called into question whether the applicant was in the United States throughout the requisite period as he claimed.

On April 2, 2012, the AAO issued a Notice of Intent to Deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond and provide additional evidence. Specifically, the AAO requested that the applicant provide evidence to establish his continuous unlawful residence and physical presence in the United States during the requisite period.

In response to the NOID, counsel asserts that the applicant has established the requisite continuous residence. Counsel submits a brief and additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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).

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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).

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 or petitioner 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided 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 that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

At the time of completing his Form I-687 application, dated January 1, 1991, the applicant indicated that he had resided in the United States since January 1981; that he had departed the United States for Mexico on one occasion in 1981, to visit his sick mother; and, that he had four (4) children, and listed their dates of birth as October 17, 1977, February 7, 1979, July 18, 1982, and June 21, 1984. However, on his Form I-485, filed on May 31, 2002, the applicant indicated that he had the same four children with the same four dates of birth as indicated on his Form I-687, and a fifth child, born on August 17, 1986. On his Form I-687, filed on September 15, 2005, the applicant indicated that since January 1, 1982 he had departed the United States for Mexico, on two occasions, in October 1983 to visit his wife, and in November 1985, to visit family. The record reflects that the applicant testified during his May 22, 2006 interview that his

applicant's child born on August 17, 1986 who is not included on the applicant's Form I-687 applications.

The applicant's Form I-687 applications, and his Form I-485, are inconsistent as the dates indicated when he visited Mexico and the lists of his children on his applications differ. Also, the applicant's testimony that his wife first came to the United States in 1987 and the birth of the child in Mexico on August 17, 1986, is inconsistent with his travel history indicated on his Form I-687 application, dated January 1, 1991.

In response to the AAO's NOID, counsel submits affidavits from [REDACTED] and [REDACTED] attesting to having known the applicant to have resided in the United States since 1985. However, this evidence does not establish the applicant's residence in the United States prior to 1985.

Also included in his response to the NOID are affidavits from [REDACTED] and [REDACTED]. [REDACTED] attests to having known the applicant to have resided in the United States since June 1981; that he and the applicant were neighbors on Center Street in the City of Orange; that he and the applicant sought work together; and, that they have been friends since they met. [REDACTED] attests that he first met the applicant in May 1982 at [REDACTED] a plumbing company where they worked until 1985 when the applicant left the company. It is noted that [REDACTED] does not indicate during what period he and the applicant resided on Center Street; he does not indicate whether and how frequently he and the applicant maintained contact since they met; and, he does not provide evidence to establish his residence on Center Street. [REDACTED] does not provide specifics, such as when in 1985 the applicant left [REDACTED] and he does not provide evidence that he had been employer there.

In addition, in an attempt to establish his claim, the applicant has provided several witness affidavits attesting to his residence in the United States during the requisite period. These affidavits, however, lack detail and do not establish the applicant's continuous residence. For example, besides stating that they have known the applicant to have resided in the United States during periods since 1981, the affiants do not give any additional information. The affidavits are substantially identical and the affiants do not indicate how they date their acquaintance with the applicant in the United States, and how and to what extent they maintained contact with the applicant since their acquaintance. None of the affiants provides specific details of their activities with the applicant and they do not date any of their activities, or state how frequently they had contact with him. As such, these affidavits are not probative of the applicant's continuous residence and are of little evidentiary value.

The documentation of record, individually and cumulatively, does not establish the applicant's continuous residence in the United States in an unlawful status during the requisite period.

The discrepancies in the documentation of record and the lack of detail in the supporting affidavits provided are material to the applicant's claim in that they have a direct bearing on his residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. The inconsistencies and lack of detail in the documentation undermines the credibility of the applicant's claim of continuous residence in an unlawful status in the United States during the requisite period.

As stated previously, 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 amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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