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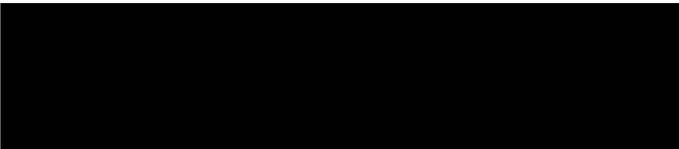
U.S. Department of Homeland Security
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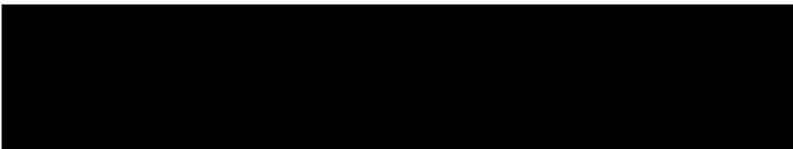
Office: LOS ANGELES

Date: DEC 10 2008

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:



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 on December 29, 2005. Upon review, the director determined that the affidavits submitted did not contain sufficient information and were inconsistent with other evidence of record. The director denied the application, finding that the applicant had not provided a preponderance of evidence to establish that she entered into the United States before January 1, 1982 and continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that the director's decision was erroneous because the letters from [REDACTED] and [REDACTED] clearly established their personal knowledge of her residence since 1981. The applicant also states that when she filed Form I-140, she listed the date of her last arrival into the United States and not her first. With respect to her degree, the applicant states that she finished her studies in September 1981 but the university did not issue the document until 1982.

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 245(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).

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

The applicant's Form I-687 at part #16 indicates that the applicant's last entry into the United States was in May 1981. At part #30 of the Form I-687 application where the applicant was asked to list her places of residence in the United States she indicated that she resided in California from June 1981 to December 1990. She indicated at part #33 of her Form I-687 application that she was employed at Main Street Car Wash in California from May 1981 to September 1988. The Form I-687 application at part #32 lists one absence from the United States during the requisite period from December 1987 to January 1988.

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided multiple documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period. In the instant case, those documents are

statements from [REDACTED] and [REDACTED] and an affidavit from the applicant's former manager, [REDACTED]

On November 16, 2006, the applicant was interviewed in connection with her I-687 application. The examiner's notes during the interview reflect that the applicant testified that she entered the United States without inspection in 1981 through San Ysidro.

Upon review, the AAO finds that the four statements that were previously submitted with the I-687 application neither confirm the applicant's residency for the requisite period nor her entry into the United States prior to January 1, 1982. The individuals writing the statements all state that their knowledge concerning the applicant's entry came from another person. The statements taken together fail to establish the applicant's illegal entry into the United States in 1981 at San Ysidro.

Moreover, while the statements read that between 1982 and 1988, the applicant was living in the United States, the comments of each affiant are based on occasional visits with the applicant during the requisite period. The statements do not contain sufficient information by which the individuals based their knowledge of the applicant's claimed residency in the United States. The statements fail to explain how those who executed the statements and the applicant developed and maintained a friendship. The statements fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The statements also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The statements fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. To be considered probative and credible, witness affidavits, and statements submitted must do more than simply state that a person 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 the 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, individually and together, the statements do not contain sufficient detail to establish their credibility. Therefore, they have minimal probative value.

The applicant indicates on her Form I-687 that she was previously employed with Main Street Car Wash in California from May 1981 to September 1988 as a car attendant. In a sworn affidavit dated December 21, 2005 signed by the [REDACTED], manager of Main Street Car Wash, the affiant states that the applicant was employed by this company from May 1981 until September 1988 but does not state the applicant's position. The affidavit conflicts with the applicant's claim of having initially entered without inspection in June 1981. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, 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. As the

employment affidavit does not meet the requirements stipulated in the aforementioned regulation and conflicts with the applicant's testimony as to her initial date of entry, it will be afforded minimal weight.

The record also contains the Application for Alien Employment Certification (Form ETA 750), and the Immigrant Petition for Alien Worker (Form I-140) filed on behalf of the applicant. At part #3 of the Form I-140 the date of arrival into the United States is listed as June 29, 1990. On appeal, the applicant states that the date listed, June 29, 1990 is not her initial entry but rather her last entry into the United States. Although outside the statutory period, this information contradicts the information on the applicant's Form I-687 indicating her most recent departure from the United States occurred in August 1990 when she visited family in Mexico and reentered August 1990.

Form ETA 750 indicates that the applicant attended Instituto Celayense, Celaya, GTO from September 1979 until September 1982. The director concluded from this information that the applicant was not in the United States before January 1, 1982 and therefore, could not meet the residency requirements. On appeal, the applicant explains in her letter dated March 29, 2007 that she finished her studies in September 1981 and that the university did not award the degree certificate until September, 1982. No other evidence of record establishes that the university issued the diploma one year after graduation. The AAO does not accept the applicant's explanation. The AAO also notes that other evidence of record has the applicant in the United States as early as May 1981.

Upon review, the statements and other evidence attest to the applicant residing in the United States from May, June or September of 1981 or from June 29, 1990. The applicant states that she entered the United States without inspection in 1981, and except for the departure in 1990, she continued her unlawful residence in the United States since such date and throughout the requisite period. None of the aforementioned documentary evidence and applications contained in the record corroborate the applicant's sworn testimony that she entered the United States through San Ysidro in 1981. No explanation is provided regarding the contradictions as to the date the applicant began residing in the United States. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's entry into and residence in the United States during the requisite period. 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 petitioner 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).

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The inconsistencies that exist in the above noted evidence call into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affidavits and statements, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.

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