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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-06-101-27025

Office: LOS ANGELES

Date: **DEC 11 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:

[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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted the inconsistencies in statements made by the affiants. The director also noted the lack of detail in and the minimum probative value of the affidavits submitted. The director further noted the absence of church records to support statements made by [REDACTED] concerning the applicant's membership at the Jehovah's Witnesses East Fullerton Spanish Congregation. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the statements made by the affiants are sufficient to support the applicant's claim of continuous unlawful residence in the United States during the requisite period. Counsel states that the applicant became known to the Jehovah's Witnesses Church in April of 1981 but was not associated with the Church until he began distributing pamphlets in August of 1981. Counsel further states that the applicant is requesting his membership records from the Church archives. Counsel also states that the affidavits submitted by [REDACTED] and [REDACTED] are not inconsistent with or contradictory to statements made by the applicant in that all affiants indicate that they knew the applicant in the United States prior to January 1, 1982. Counsel states that the director failed to mention the photographs in the decision. The applicant submits a copy of an untranslated document on appeal.

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).

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. *See* 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).

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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on January 9, 2006. The applicant

indicated on his I-687 Application at part #30 that he resided at [REDACTED] in Fullerton, California from March of 1981 to November of 1987; and [REDACTED] in Whittier, California from November of 1987 to March of 1992.

The applicant submitted as evidence, photographs of himself and others that contain handwritten dates of 1981, 1983, 1986, and 1988. The handwritten dates are not authenticated or verifiable. Therefore, this evidence cannot be accorded any weight in establishing that the applicant was present in the United States before January 1, 1982, or throughout the requisite period.

The applicant submitted the following attestations:

- Two affidavits dated October 2, 2006 and October 10, 2006 from [REDACTED]. The affiant stated in the October 2, 2006 affidavit that he has known the applicant since they were kids and that the applicant entered the United States in March of 1981. The affiant stated that the applicant lived with him in Fullerton, California and worked odd jobs. The affiant also stated that the applicant assisted the Jehovah Witness in Fullerton and moved from Fullerton to Whittier, California in 1989. The affiant stated in the October 10, 2006 affidavit that he met the applicant when he illegally crossed the border from Tijuana, Mexico on April 17, 1981. He also stated that the applicant lived with his family at [REDACTED] in Fullerton, California until November of 1987 when he moved to Whittier. These statements are contradictory to one another. It is also noted that the statement made by the affiant on October 10, 2006 is inconsistent with what the applicant stated on his I-687 Application dated January 9, 2006 where he indicated at part #30 that he resided at [REDACTED] in Fullerton, California. The statement made by the affiant on October 2, 2006 is inconsistent with what the applicant testified to under oath during his interview with immigration officials on October 11, 2006, when the applicant indicated that he entered the United States in March of 1981 and lived for a month in Santa Ana, California. These inconsistencies call into question the credibility of the affiant's statement. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the affidavits are contradictory to one another and because they are inconsistent with statements made by the applicant and because they are lacking in detail, they can be afforded little weight in establishing the applicant's residence in the United States during the requisite period.
- A letter and an affidavit dated October 9, 2006 from [REDACTED] in which he stated that according to the records, the applicant was a member of the East Fullerton Spanish Congregation of Jehovah's Witnesses and has been associated with the congregation from August of 1981 to December of 1989 and that the applicant was baptized on April 14, 1986. This declaration does not conform to regulatory standards for

attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not specify the applicant's place of residence during the alleged membership period, nor does it establish the origin of the information being attested to.¹ Because this letter does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she stated that she has known the applicant since April of 1981 and that they are members of the same church. The affiant also stated that she would often give the applicant a ride to his house. Here, the affiant fails to specify the name of the church that she and the applicant attended or its location. She has also failed to specify the frequency with which she saw and communicated with the applicant during the requisite period. Although the affiant states that she would drive the applicant to his home, she has failed to specify the applicant's place of residence during the period of their relationship. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director determined that the applicant had failed to prove his eligibility for temporary residence status. The director noted that inconsistencies in the record and concluded that the affidavits lacked probative value. The director further noted that the evidence, taken as a whole, was not sufficiently credible or adequate to support the applicant's claimed eligibility for the immigration benefit sought.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. The applicant resubmits copies of his photographs, and affidavits and attestations from [REDACTED], and [REDACTED] and submits a statement from the applicant. The applicant also submits a copy of an untranslated handwritten monthly statement dated April 14, 1986. 8 C.F.R. § 103.2(b)(3). The regulations require that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the applicant's claim. Accordingly, the evidence is not probative and will not be accorded any evidentiary weight in this proceeding.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial. The attestations submitted by [REDACTED] are inconsistent with statements made by the applicant. The attestations submitted by [REDACTED] do not conform to regulatory

¹ It is noted by the AAO that although the Director requested the applicant submit his church membership records, he has failed to do so, stating that "the church only keeps the present date of baptism."

standards for attestations by churches. The attestation submitted by [REDACTED] is lacking in detail.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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 evidence that is inconsistent with his statements, that are lacking in detail, and that fail to conform to statutory standards, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.