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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PORTLAND

Date:

JUL 24 2008

MSC 05 250 12424

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.

for Robert P. Wiemann, 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 District Director, Portland, and 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 determined 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. Specifically, the director noted that the applicant failed to provide documentation to explain why his father was living separately in California while the applicant and his mother resided in Arizona. The director also noted that the applicant failed to provide documentation establishing that he attended school during the statutory period even though he was of school age at the time. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the director abused his discretion in denying the application and provides an additional affidavit from the applicant's mom to establish the unavailability of certain contemporaneous documents.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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).

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.* 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 has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. In the present matter, the applicant has not met this burden. The record shows that the applicant failed to provide documentation addressing his claimed residence in the United States during the statutory period in support of his Form I-687.

Accordingly, on January 12, 2006, the director issued a notice of intent to deny (NOID), informing the applicant that he did not submit sufficient evidence to establish his eligibility for temporary resident status. In response to the NOID, the applicant provided the following:

1. A letter dated February 7, 2006 from [REDACTED] who stated that she had known [REDACTED] the applicant's father, from 1981 to 1988. This document is void of any probative value, as there is no indication that this individual knew the applicant or his claimed residence in the United States during the statutory period.
2. An affidavit dated February 6, 2006 and a separate letter dated February 8, 2006 from [REDACTED] whose statement was made in Spanish. While the February 8th letter is accompanied by a notarized English language translation, 8 C.F.R. § 103.2(b)(3) requires that the source of the English translation must be a certified translator. In the present matter, there is no indication as to who translated the document and whether the translation was completed by a certified translator. Additionally, as [REDACTED]'s ability to write in English is called into question by virtue of the February 8th letter, the AAO cannot determine whether this individual was the author of the February 6th affidavit. Lastly, even

if [REDACTED] ability to write in English were not called into question, the contents of the statements signed by him lack probative value in that neither the letter nor the affidavit offers any specific details about the applicant's U.S. residence during the statutory period aside from providing the applicant's purported residential address, which cannot be verified because the applicant did not provide any addresses in the United States prior to 1987 when completing the history of residences found in No. 32 of the Form I-687.

3. A letter dated February 2, 2006 from [REDACTED] president of Sun Valley Harvest, Inc., who discussed the employment of the applicant's father as a farm laborer from 1981 to 1987. This letter has no probative value in the present proceeding, as the U.S. employment of the applicant's father during the statutory period is not an indication that the applicant resided in the United States during the same period of time.

After reviewing the applicant's supporting documentation, the director determined that the applicant failed to establish that he resided in the United States during the statutory period as claimed.¹ The director called into question the applicant's inability to provide documentation showing his school attendance in the United States during the statutory period and questioned the living arrangement wherein the applicant purportedly resided in Arizona with his mother while his father resided in California.

On appeal, counsel asserts that the director abused his discretion by ignoring the statements of Mr. [REDACTED] and by requiring that the applicant submit school records to establish his residence in the United States during the statutory period. Counsel's argument, however, is without merit. First, with regard to [REDACTED] statements, while the director did not specifically cite these documents or discuss their contents, he clearly acknowledged their submission. As specifically discussed above, neither statement from [REDACTED] has probative value and, therefore, cannot be relied upon to establish that the applicant resided in the United States as claimed. Second, with regard to the reference regarding the lack of school records, the director made a valid point in light of the applicant's age during the statutory period. That being said, the applicant has the opportunity to address the director's findings on appeal. In the present matter, the applicant has, in fact, addressed the issue of his school attendance by submitting a notarized translation of a statement dated November 8, 2006 from [REDACTED] the applicant's mother, who provides an explanation of why, given the specific circumstances of the applicant's alleged residence, the applicant could not attend school during the statutory period. In light of the statement of the applicant's mother, no adverse findings will result from the lack of school records.

Nevertheless, the applicant's eligibility will be based on the sufficiency of the evidence submitted. *See* 8 C.F.R. § 245a.2(d)(5). Thus, while it is plausible that the applicant may not have attended school in the United States during the statutory period, the explanation provided by the applicant's mother does not relieve the applicant from the burden of providing other evidence in support of his claim. In the present matter, the record consists of documents that are significantly lacking in probative value. The

¹ It is noted for the record that the director referred to the applicant's submissions as affidavits. However, two of the applicant's submissions were not sworn statements containing a notary stamped from an authorized individual. As such, only one of the applicant's submissions is an affidavit.

shortcomings of the statements submitted in response to the NOID have already been addressed. While the AAO acknowledges the additional affidavit submitted on appeal, the contents of this document are insufficient to establish that the applicant continuously resided in the United States during the statutory period. Specifically, [REDACTED] claims that the applicant's father would not allow the applicant to go outside, which included attending school, and further states that the applicant rarely got sick, which would explain the lack of medical records. The affiant further explains that she and the applicant lived with a friend of the applicant's father and states that she and her husband returned to Guatemala when her husband was unable to secure permanent residence in the United States. However, other than explaining why certain contemporaneous evidence was not available, the affiant does provide any specific details about the applicant's purported residence in the United States during the statutory period.

In summary, the applicant's entire claim of residence during the relevant time period rests almost entirely on the claim of his mother. Additionally, as briefly noted above, the AAO observes that the applicant provided no residential addresses in the United States predating 1987.² It is unclear why, if the applicant resided at the same residential address from 1981 to 1989, the applicant failed to provide a residential address where he and his mother purportedly remained during the entire statutory period. Moreover, the claim that the applicant resided with his mother in Arizona from 1981 to 1989 is directly contradicted by the residential history provided by the applicant in No. 30 of the Form I-687, where the applicant's earliest residence in the United States was shown to be from September 1987 to June 1993 during which time the applicant claimed to have resided at [REDACTED] Milwaukee, OR. There is no indication that the applicant resided in Arizona during any portion of the statutory period, according to the residential history provided in the Form I-687 application. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of probative supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies described above, seriously detracts from the credibility of this claim. As previously stated, 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). Given the applicant's contradictory statements on his application and his 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 the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.

² See No. 32 of the applicant's Form I-687.