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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC 06 101 16898

Office: LOS ANGELES

Date: JUL 30 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.

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, Los Angeles, 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. The director noted that information provided by the applicant in his asylum application and his application for cancellation of removal indicated that the applicant did not first enter the United States until 1984. Based on this information, the director determined that the applicant's claim that he continuously resided in the United States during the entire statutory period lacked credibility. Although the director's adverse decision was also based, in part, on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status and counsel's arguments regarding the applicant's class member status need not be addressed.

On appeal, counsel for the applicant disputes the director's adverse decision and attempts to reconcile the applicant's Form I-687 with the applications for asylum and cancellation of removal with regard to the date of the applicant's initial entry into the United States.

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.

In the present matter, the applicant submitted a number of contemporaneous documents in the form of federal tax returns and W-2 wage and tax statements, which indicate that the applicant has established by a preponderance of the evidence that he resided in the United States from 1984 through the remaining portion of the statutory. Therefore, the primary issue before the AAO is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982, the date the statutory period commenced, until 1984. It is the AAO's determination that the applicant in the present matter has failed to meet this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687, dated February 1, 1991, and subsequently filed a Form I-485 seeking permanent resident status under the Legalization Immigration Family Unity (LIFE) Act. The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the time period in question:

1. An affidavit dated December 28, 1990 from [REDACTED] who stated that he is the applicant's uncle and claimed that the applicant resided with him from October 1981 until April 1983. The affiant claimed that he paid the rent and all utilities.
2. An undated letter from [REDACTED] who stated that he had known the applicant since October 1981. He stated that the applicant performed yard services for him from 1982 to 1983. However, past employment records are subject to a number of requirements cited in

8 C.F.R. § 245a.2(d)(3)(i). This letter of employment lacks the following information: the applicant's address at the time of employment; although the years of employment are provided, the letter does not disclose the exact period of employment; nor is there any discussion as to the basis for the information provided. Additionally, [REDACTED] did not explain how he first met the applicant or provide any further information about the events and/or circumstances of the applicant's residence in the United States during the statutory period.

3. An affidavit dated February 1, 1991 from [REDACTED] who stated that he is the applicant's cousin and claimed that he knew of the applicant's residence in the United States since 1981. The affiant also claimed that he and the applicant performed gardening services together in 1982 and 1983.
4. A sworn statement dated April 2006 from [REDACTED] who stated that he had known the applicant since October 1981. He claimed that he first met the applicant while watching a soccer game at Mile Square Park and that he and the applicant got together once a week since then to play and watch soccer.

The record also contains two additional sworn statements dated April 2006 from the affiants in Nos. 1 and 3, above. It is noted that both affiants reiterated the information provided in each of their initial statements. In the more recent statement, [REDACTED] claimed that after April 1983 he was in contact with the applicant every three days. [REDACTED] added that he and the applicant played soccer together every week and that the applicant was working for him, doing gardening and landscaping from October 1981 to 1983 or 1984. However, all of the statements and affidavits provided in support of the applicant's claim are commonly lacking sufficient information about the specific events and/or circumstances of the applicant's residence in the United States during the time period in question. As such, each of the above statements will be afforded only minimal evidentiary weight.

On September 27, 2006, the director issued a decision, denying the applicant's Form I-687. With regard to the issue of the applicant's temporary residence, the director determined that the applicant's claim lacks credibility in light of the information he provided on other, unrelated immigration applications. Specifically, the director noted that the applicant's asylum and cancellation of removal applications both indicate that the applicant's first entry into the United States took place in 1984, not in 1981 as claimed by the applicant and the individuals whose statements have been submitted to support the applicant's claim.

On appeal, counsel asserts that the director misconstrued the applicant's responses to the queries posed in the applications for asylum and cancellation of removal, respectively. Specifically, counsel contends that 1984 was the year the applicant claimed as his latest entry into the United States, not his first entry, and that the information provided in the two applications is therefore not inconsistent with the applicant's claimed residence in the United States from 1981 through 1983. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, counsel's assertions are not supported by the

documentation on record. First, the asylum application instructed the applicant to disclose the date he last left his home country and the date he last entered the United States. The applicant responded to each query with the dates April 1984 and 1997. It is noted that in the applicant's latest Form I-687, he indicated that his absences from the United States since entry included visits to Mexico from October to November 1987 and from March to April 1997. There was no mention of any departure or entry in 1984. Additionally, at page four, Part C of the asylum application, the applicant provided a separate statement explaining why he was seeking asylum. In that statement, the applicant expressly stated that he arrived to the United States in 1984 and had been employed since his arrival. In No. 16 of the first page of the cancellation of removal application, the applicant was asked to disclose all of the locations where he had resided in the United States. It is noted that the applicant's first residence was listed as having commenced in 1984. Similarly, the applicant listed his first employment (page 3, No. 40) as having commenced in 1984.

Accordingly, the director properly found that the applicant's most recent attempt to establish eligibility for temporary resident status was compromised by the information the applicant provided in the applications for asylum and cancellation of removal, where the applicant contradicted his most recent claim that he has resided in the United States since prior to January 1, 1982. 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). Counsel asserts that the statements and affidavits submitted by the applicant are sufficient to support the claim put forth in the Form I-687. However, the statement and information offered by the applicant in his prior applications, which indicate that his U.S. residence did not begin prior to January 1, 1982, significantly detracts from the reliability and sufficiency of the evidence now offered in support of the Form I-687. *See id.*

In summary, the record contains inconsistent information with regard to the applicant's initial date of entry into the United States. While the applicant has submitted documentation in support of his most recent claim, attempting to establish that he entered the United States prior to January 1, 1982, such documentation, which is entirely comprised of third party statements, is not sufficient to resolve the considerable discrepancy regarding the applicant's initial date of entry into the United States. As discussed above, the supporting documentation lacks detailed statements regarding the applicant's residence in the United States during the statutory period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies discussed above, seriously detract 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 applications 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.