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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-218-10691

Office: LOS ANGELES

Date: JUN 09 2008

IN RE: Applicant: [REDACTED]

PETITION: 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:

SELF-REPRESENTED

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 if the matter was 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, California. 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, together comprising the I-687 Application. 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 found that the applicant had not provided sufficient credible evidence to overcome the inconsistencies between the information contained in his original application for temporary residence and subsequent affidavits. 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, the applicant reiterates his claim of residence in this country for the requisite period. He also states that the office that prepared the I-687 application package included “untrue and incorrect information without [his] approval or knowledge.” The applicant includes a new affidavit to establish the requisite residency in the United States in support of his 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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 (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 overcome the element of doubt created by the "untrue and incorrect information" originally submitted with his application for temporary residence. 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 his 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the applicant fails to establish that the claim is "probably true" or "more likely than not." *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987). Therefore, the applicant has not established eligibility for temporary resident status pursuant to the terms of the settlement agreements.

The record shows that the applicant submitted his I-687 Application to U.S. Citizenship and Immigration Services (CIS) on May 6, 2005. Simultaneously, the applicant submitted an Application for Waiver of Grounds of Excludability (Form I-690), alleging excludability pursuant to Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 212(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Specifically, the record contains a “verification of employment and identity” dated March 13, 2005, from one Mr. [REDACTED]’s statement claims that he was the general manager for [REDACTED] Farms, and that the applicant was employed in harvesting produce from January 1981 to April 1987, and was paid in cash at the rate of \$4.50 an hour. However, on the Notice of Appeal (Form I-694), the applicant states that he does not know [REDACTED] and that he has never worked for him. The applicant disavows any prior knowledge of the false employment information, and claims that it was submitted without his knowledge or consent.

Prior to issuing the notice of denial, the director issued a Form I-72 on November 18, 2005, requesting that the applicant provide proof of his residence in the United States prior to 1982, and proof from [REDACTED] that the applicant had not, in fact, worked for [REDACTED] Farms. The applicant submitted a response to the request for additional evidence on December 10, 2005. The applicant included an affidavit from Mr. [REDACTED] affirming that he does not know the applicant, has no relationship with him, and never hired him for any form of employment. The applicant also included a copy of [REDACTED]’s California driver’s license. Furthermore, the applicant claimed in a separate statement that he submitted all of the evidence in his possession at the time of his interview, that he first entered the United States in 1981 when he was 17 years old, and that he worked for [REDACTED]’s Mobile Repair since 1982. The applicant explained additionally that he did not file income tax returns because he did not possess either a social security number or lawful status in the United States.

Nonetheless, the director determined that the applicant had failed to submit sufficient credible evidence to establish that he had continuously resided in the United States for the requisite period and, accordingly, denied the application on July 10, 2006. The application for a waiver of the grounds of excludability was denied on July 19, 2006.

As evidence of his residency in the United States prior to January of 1982, the applicant now submits an affidavit from [REDACTED]. Mr. [REDACTED] affirms that he first met the applicant in December, 1979 at the “Iglesia de JesusCristo” church located at 20303 San Fernando Road, in New Hall, CA. The affiant also states that he has been in contact with the applicant for over 20 years, that they attended the same church from 1979 to 1987, and that the applicant has worked for him at [REDACTED]’s Mobile Repair since 1982. He also avers that the applicant lived in house from 1982 to 1999. As proof of his status, [REDACTED] provides photocopies of his United States passport and various tax bills, bank records, account statements, deeds, and driver’s license dated from 1979 to 1989.

The AAO notes that despite the volume of evidence submitted with [REDACTED]’s affidavit, none of the photocopies of the account statements, tax bills, etc., establish a connection between the affiant and the applicant. They establish that the affiant resided in the United States prior to 1982, but they do not corroborate the applicant’s claim that he, also, resided in the United States during that period of time. None of the documents mention the applicant, or provide any proof of his association with [REDACTED]. Consequently, they are of no probative value. Therefore, the only evidence submitted by the applicant that he initially entered the United States prior to January, 1982 is his own statement to that effect, and the affidavit of [REDACTED]. Absent independent, objective evidence to corroborate his claim of residence, the applicant’s own statement, and the single affidavit from [REDACTED] are not sufficient to overcome the doubt created by the false employment information. *Matter of Ho, supra*. Furthermore, the applicant does not mention the church he claims he attended with [REDACTED] in his application for temporary residence,

and a search of geographic records does not reveal a church located at that address. Also, the applicant does not list employment with [REDACTED] despite [REDACTED]'s claim that he employed the applicant on a full time basis for five years at his place of business, [REDACTED] Mobile Repair, when the applicant reached 18 years of age.

The AAO finds that the applicant signed the Form I-687 and is responsible for the contents of that form. He thus misrepresented his employment history, and by engaging in such an action, he has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the requisite period.

The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). 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.

[REDACTED]