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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-05-236-37366

Office: LOS ANGELES

Date: JUN 19 2001

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: 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 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. 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 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 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 asserts that he was nervous during his interview with the immigration officer on March 6, 2006. He also asserts his claim of eligibility for temporary resident status and attempts to explain his residence and his employment during the requisite period. The applicant submits an affidavit 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 or her 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 Citizenship and Immigration Services (CIS) on May 25, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] Pico Rivera, California as his residence from April of 1981 to April of 1989, and [REDACTED], Pacoima, California, as his residence from May of 1989 to December of 1989. Similarly, at part #33, where the applicant was asked to show his employment history, he listed his first employment in the United States as a designer for [REDACTED] Landscaping located in Northridge, California, from May of 1981 to December of 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of two handwritten rent receipts dated December 2, 1981 and May 1, 1982, in the name of [REDACTED] for the rent of [REDACTED] Pico Rivera, California. Here, there is no evidence to demonstrate that the applicant is the same [REDACTED] who allegedly rented living quarters at the above noted address. It is further noted that the California Identification Card submitted by the applicant in the name of [REDACTED] has a date of birth as January 27, 1965, whereas the applicant listed his date of birth on his Form I-687 application, at part #3 as April 3, 1962. There has been no plausible explanation given for this inconsistency. The applicant also submitted the following evidence:

- A declaration dated September 10, 1993, from [REDACTED] of [REDACTED] Landscaping in which he stated that the company hired the applicant on May 4, 1981 as a landscape designer, and that he continued in their employ until December of 1988. Here, the affidavit does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the company manager does not specify the address where the applicant resided throughout the claimed employment period. The company representative fails to state whether or not the information he provided was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarant. The record of proceeding reveals that the applicant was asked twice during his interview with the immigration officer on March 6, 2006 who [REDACTED] was, and he stated under penalty of perjury in both instances that he did not know. Because the affidavit is inconsistent with statements made by the applicant, and because it is not in compliance with regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981 and has kept in contact with him since. The record of proceeding reveals that the applicant was asked about his relations with the affiant during his interview with the immigration officer on March 6, 2006. The record shows that the applicant responded by stating under penalty of perjury that he has known the affiant since 1982, not 1981. There has been no explanation given for this inconsistency. The affiant has failed to specify how she met the applicant and the frequency with which she saw him throughout the requisite period. Although not required, the affiant has failed to show that she herself was present in the United States throughout the requisite period. Because the affidavit is inconsistent with statements made by the applicant, and because it is lacking in specificity, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] dated March 5, 2006, in which he stated that he has known the applicant since December 25, 1985, and that he has been a close friend of the applicant's family. The affiant also stated that he has personal contact with the applicant several times a month. The affiant failed to state how he met the applicant, how he dated his acquaintance with the applicant, and to provide details regarding his relationship with the applicant. Give the paucity of details, this affidavit will be given nominal weight.

In denying the application the director noted the multiple inconsistencies in the statements made by the applicant on his Form I-687 application and during his interview with the immigration officer pertaining to his residence and employment in the United States.

On appeal, the applicant attempts to explain these inconsistencies. He asserts that he was nervous and scared during his interview with the immigration officer on March 6, 2006. He also asserts that he has used an alias name, [REDACTED], since being in the United States and that his employment with [REDACTED]'s Landscaping was on an as needed basis. He states that he lived with his uncle in Costa Meza,

California, and with his friend in Pico Rivera, California when he had a job to do in Los Angeles. The applicant resubmits on appeal copies of the September 10, 1993 letter from [REDACTED]'s Landscaping, his California Identification Card, the California Identification Card of [REDACTED] and rent receipts for December of 1981 and May of 1982. The applicant also submitted the following attestation:

- An affidavit dated March 20, 2006 from [REDACTED] in which he states that he has known the applicant from 1980 to 1987 and that he met the applicant while he lived at [REDACTED] in Costa Mesa, California. Here, the attestation directly conflicts with the applicant's claim during his immigration interview and on his Form I-687 application of having initially entered into the United States in April of 1981. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 and stated during his immigration interview, doubt is cast on assertions made in the affidavit. This affidavit conflicts with other evidence in the record, therefore, little weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

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. He has not submitted any evidence on appeal sufficient to overcome the director's denial. Although the applicant claims to have been nervous and scared during his immigration interview, he has failed to submit independent documentary evidence to substantiate his claim. The information given by the affiants is in direct conflict with the statements on the applicant's Form I-687 application and his testimony given during his March 2006 interview. The applicant fails to overcome this conflict by statements that he makes on appeal. It is further noted that the applicant has failed to provide an explanation for why he would use his true name, [REDACTED] to obtain a California Identification Card in 1989 and use the name [REDACTED] to obtain the same identification card the following year. There has been no plausible explanation given for these numerous discrepancies. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Any attempt 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). Furthermore, the attestations submitted are lacking in detail and contain conflicting statements, and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

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 contradictory statements throughout the record of proceeding 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 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.