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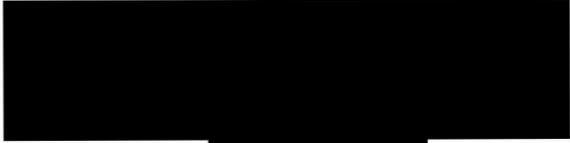
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FILE:

MSC 06 101 24084

Office: LOS ANGELES

Date:

NOV. 24 2008

IN RE: Applicant:



APPLICATION:

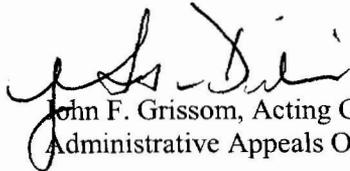
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
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 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 has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

#### Witness Statements

- [REDACTED] submitted a notarized statement dated “November, 2006” wherein he states that he has known the applicant for over twenty years, having first met on a construction job site. [REDACTED] states that the two became friends and have worked on many projects together over the years.
- [REDACTED] submitted a letter stating that he first met the applicant “as a fellow worker,” and that the two have remained in contact over the years as friends. The declarant vouches for the applicant’s character, but provides no additional information.
- [REDACTED] submitted a sworn affidavit stating that he and the applicant have been good friends since 1981, and that the applicant lived with him “during 1981 through [M]arch [of] 1982 at [REDACTED]. The Form I-687 indicates that the applicant lived at [REDACTED].”
- [REDACTED] submitted a sworn affidavit wherein he states that he has personal knowledge that the applicant has resided in Los Angeles since 1980. The affiant states that he and the applicant are friends, having first met in Mexico and continued their association in the United States.

- [REDACTED] submitted a notarized statement wherein she states that she has personally known the applicant since 1982. The applicant states that the applicant worked for her father as a gardener on a biweekly basis, and that he now works for [REDACTED] at her residence on a monthly basis.
- [REDACTED] submitted a sworn affidavit wherein she states that she owns real estate located at [REDACTED] and that the applicant resided at that address from March of 1985 to March of 1988.
- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant since childhood, and that he saw the applicant again in 1984 as the two were neighbors and coworkers in east Los Angeles.
- [REDACTED] submitted a sworn affidavit wherein she states that she has personal knowledge that the applicant has resided in the United States from December of 1981 until the present time (affidavit date – January 6, 2007). The affiant lists the dates and cities of residence for the applicant during that time frame, and the dates and cities listed are consistent with those listed by the applicant on the Form I-687. The affiant states that she knows the applicant as a friend, and states that the two see each other at “parties, family and weekend reunions.”
- [REDACTED] submitted a notarized witness statement wherein she states that she has personal knowledge that the applicant has resided in the United States from December of 1981 until the present time (affidavit date – November 20, 2006). The affiant lists the dates and cities of residence for the applicant during that time frame, and the dates and cities listed are consistent with those listed by the applicant on the Form I-687. The affiant states that: she has known the applicant since 1962; the two are cousins and used to live in the same town; to the best of her knowledge the applicant came to live in the United States in December of 1981; and that since 1981 the two have remained in touch having family, weekends and special parties together.
- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant since 1981 as friends. The affiant further states that he was the manager of a building where the applicant used to live. On appeal, the applicant states that [REDACTED] manages a building at [REDACTED]. This address is not reflected as one of the applicant’s addresses in the United States on the Form I-687.

#### Applicant Statements

- The applicant submitted an unsworn statement on appeal stating that he has resided in the United States since December of 1980. The applicant states that he made certain errors on his Form I-687, including the date that he first resided in the United States (stating December, 1981). The applicant further states that he incorrectly stated to a United States immigration officer that he first entered the country in December of 1981. The applicant states that he made an error in his initial application, and that his correct address is [REDACTED]

Canoga Park, CA. The applicant states that [REDACTED] is the manager of a building at [REDACTED] [REDACTED] "from 1981 to present." The applicant seeks to correct those initial errors with his statement on appeal. The applicant further states that he has no other evidence of his residence prior to 1988 as he was working on a cash basis.

- The applicant issued a sworn written statement (in Spanish) before a United States immigration officer stating, in part, that he entered the United States from Mexico in December of 1981.

#### Other Evidence

- The applicant submitted copies of photographs with a handwritten note of "1986." The record contains no explanation of what the photographs reflect, or other evidence of the date that they were taken. The applicant also submitted copies of envelopes addressed to him with postmarks of 1987, 1988 or illegible. Finally, the applicant submitted a merchandise receipt from the USA Electronic Center for merchandise purchased.<sup>1</sup> The receipt bears a hand written date of November 17, 1985.

The applicant provides no additional evidence relevant to the requisite period in support of his application.

Although the applicant has submitted numerous witness statements and his own statements in support of his application, he has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity alone, but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The witness statements submitted state generally that the witnesses have known the applicant for various periods of time, and make a positive character reference on the applicant's behalf. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements are not sufficiently detailed to establish the assertions made. Therefore, they have little probative value.

The applicant made an unsworn statement on appeal, and a sworn statement before a United States immigration officer. On November 27, 2006, the applicant issued a sworn written statement in Spanish wherein he stated, in pertinent part, that he entered the United States in December of 1981. This date is consistent with the information noted by the applicant on his Form I-687. On appeal, the applicant submitted

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<sup>1</sup> The date of the receipt appears to have been altered.

an unsworn statement stating, in part, that his previous sworn statement was incorrect, and that he actually entered the United States in December of 1980. The statements submitted by the applicant in this regard are inconsistent. The applicant has not sufficiently explained the inconsistency by objective evidence so that a determination may be made as to where the truth actually lies. Further, the inconsistency is material to the applicant's claim as it must be determined when the applicant actually entered the United States in order to determine whether the applicant has continuously resided in this country throughout the requisite period. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence lacks sufficient detail to establish the applicant's presence in this country for the requisite time 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 his claim. As previously noted, pursuant to 8 C.F.R. § 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 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.

The applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status 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--*, *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.