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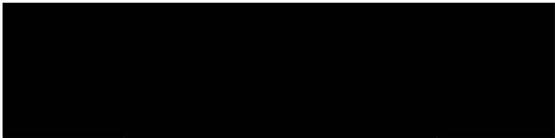
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-316-11052

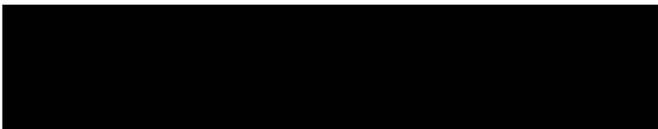
Office: LOS ANGELES

Date: OCT 02 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:



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 further determined that the applicant failed to establish his class membership. 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 entered the United States without inspection in 1979. The applicant states that he has had the following absences from the United States: December 1982 until February 1983; November 1983 until December 1983; May 1984; July 1986 until August 1986; and April 1988 until May 1988. The applicant states that he has been continuously present in the United States since his last entry. The applicant asserts that when he attempted to file his application he was front desked or told that he did not qualify because of his exit during the qualifying time period.

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. 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 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 August 12, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Simi Valley, California from 1998 until 2001. At part #33, he showed his first employment in the United States to be for [REDACTED] in Camarillo, California. However, he did not provide the dates of his employment with this company or any of his other former places of employment. The applicant's failure to show his residence and employment during the requisite period draws into question the overall credibility of his application.

On October 10, 2006, the director issued a notice of denial to the applicant. In denying the application the director determined that the applicant was not discouraged from filing an application during the original legalization application period. The director found that during the applicant's interview he testified that he first entered the United States in 1979, departed the United States in 1982, and returned to the United States after four months. The director determined that this departure exceeded 45 days; therefore it fails to meet the definition of continuous residence. The director found that the applicant indicated in a previously filed application that he is a national of Guatemala.¹ The director determined that the applicant's testimony is not credible. The director concluded that the applicant failed to establish eligibility for temporary resident status, and failed to establish class membership.

It should be noted that although the director's denial notice includes a finding that the applicant failed to establish class membership, he did not deny the application for class membership. Instead, the director treated the applicant as a class member and adjudicated the application for temporary residence on the merits. Therefore, the applicant's class membership is not at issue in this proceeding.

On appeal, the applicant asserts that he entered the United States without inspection in 1979. The applicant states that he has had the following absences from the United States: December 1982 until February 1983; November 1983 until December 1983; May 1984; July 1986 until August 1986; and April 1988 until May 1988. The applicant states that he has been continuously present in the United States since his last entry. The applicant asserts that when he attempted to file his application he was front desked or told that he did not qualify because of his exit during the qualifying time period.

The applicant submitted as corroborating documentation, identical letters from [REDACTED] and [REDACTED], respectively dated November 3, 2006, October 2, 2006 and November 2, 2006. These letters provide, "[I] have known [REDACTED] since 1982 to present. As long as I have known [REDACTED] he has been a loyal friend and a great citizen of our country. [REDACTED] has proven to me time and time again what a good and honest person he is." These letters fail to convey how and where the authors first became acquainted with the applicant. Furthermore, the letters do not illustrate the authors' relationship with the applicant in the United States during the requisite period. Given these deficiencies, these letters are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In conclusion, the applicant's assertions and documentary evidence fail to overcome the basis for the director's denial. In denying the application, the director stated that the applicant indicated in a previously filed application that he is a national of Guatemala. The applicant's record shows that on April 16, 1991, he filed a Form I-589, Application for Asylum. The applicant indicated

¹ The applicant indicated on his Form I-687 that he is a citizen of Mexico. The applicant furnished a Mexican Birth Certificate as his identity document.

on this application that he is a national of Guatemala and his place of birth as Sanarate, Guatemala. This information is inconsistent with the applicant's Form I-687. The applicant showed on his Form I-687 that he is a citizen of Mexico and his place of birth as Zacatecaz, Mexico. The applicant's Mexican birth certificate, submitted with his Form I-687, corroborates his birth in Mexico. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The applicant has not provided any explanation of the apparent inconsistency identified by the director, and he has failed to submit any relevant objective evidence to overcome this inconsistency. The inconsistency in the record regarding the applicant's nationality and place of birth lead to a finding that he has failed to submit credible documentation to establish his proof of identity, as required under 8 C.F.R. § 245a.2(d).

Additionally, the director based her denial on the applicant's failure establish his continuous residence because he had a departure from the United States that exceeded 45 days. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant asserts on appeal that he has had the following absences from the United States: December 1982 until February 1983; November 1983 until December 1983; May 1984; July 1986 until August 1986; and April 1988 until May 1988. The applicant states that he has been continuously present in the United States since his last entry. However, the applicant's record shows documentation that is in conflict with this testimony. During the applicant's interview he testified that in 1982 he was absent from the United States for four months. Furthermore, on the applicant's Form I-589, filed April 16, 1991, he showed his last arrival in the United States as February 18, 1988. On appeal, the applicant fails to provide February 1988 as his date of arrival into the United States. Finally, on August 18, 2001, the applicant's sister filed a Form I-130, Petition for Alien Relative, on his behalf. This petition shows that the applicant last arrived in the United States in 1991. Although this date is outside of the requisite period, it conflicts with the applicant's assertion that he has been continuously present in the United States since May 1988. The inconsistencies in the record seriously undermine the applicant's credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period. Pursuant to *Matter of Ho, supra*, the applicant has failed to submit any relevant objective evidence to overcome these inconsistencies.

Moreover, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during

the requisite period, three identical letters. These letters fail to establish that the authors' direct personal knowledge of the applicant's residence in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. Furthermore, the applicant failed to show his residence and employment in the United States during the requisite period on his Form I-687. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding. The applicant is ineligible for temporary resident status for this additional reason.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.