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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: SEATTLE Date: JUL 08 2008

MSC-06-073-10848

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, Seattle. The decision is now before the Administrative Appeals Office 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 been residing in the United States since 1981. The applicant states that the addresses on his application are old and he may have forgotten them. The applicant states that due to this reason, there could be a mistake in the addresses. The applicant furnishes an affidavit from [redacted] as additional corroborating evidence.

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 on December 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 that during the requisite period he resided in Fresno, California from October 1981 until June 1985 and Bakersfield, California from July 1985 until August 1992. At part #33 of the application, he showed that he was employed as a farmer from 1981 until 1992. Notably, the applicant neglected to provide the name of his employer and the location of his employment during this period. This lack of detail undermines the applicant's own credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period.

The applicant submitted the following documents:

- A letter from [redacted], dated March 9, 2005, which provides, "I, [redacted] resident of [redacted] Bakersfield Ca, 93307. State that I[redacted] lived with me at 1708

Fresno, Ca 93724 from Oct, 1981 to June 1985. He was helping me Cook food & cleenup [sic]. . . ." Although the letter states that resided with the applicant from October 1981 until June 1985, it fails to provide any details to validate this assertion. The letter is ambiguous as to whether was the owner or the renter of the property. The letter does not detail the applicant's living arrangement and/or agreement with . In addition, the letter does not convey how and where the applicant and first became acquainted. Given the deficiencies in this letter, it has no probative value as evidence of the applicant's continuous residence in the United States from October 1981 until June 1985.

- A letter from , dated November 17, 2005, which provides, "I, resident of Bakersfield Ca, 93307. State that lived with me at Bakersfield Ca, 93305 from July, 1985 to August, 1992. She [sic] was paying Rent $145.00 per month. . . ." Although the letter states that resided with the applicant from July 1985 until August 1992, it fails to provide any details to validate this assertion. The letter is ambiguous as to whether was the owner or the renter of the property. The letter does not detail the applicant's living arrangement and/or agreement with . In addition, the letter does not convey how and where the applicant and first became acquainted. Given the deficiencies in this letter, it has no probative value as evidence of the applicant's continuous residence in the United States from July 1985 until the end of the requisite period.

On January 11, 2006, the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to furnish additional evidence in response to the NOID.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In response to the NOID, the applicant submitted a rebuttal statement. The applicant asserted that he has resided in the United States since 1981. The applicant stated he does not have proof of his entries into the United States because he entered on each occasion without inspection.

The applicant submitted a notarized letter from , dated January 26, 2006. This letter provides, "I well know from 1981-1992 while I was

staying in bakers field [sic] California. He is [sic] good friend of mine and he helped in work and culture related [sic] time to time." This letter neglects to explain the origin of the information being attested to. The letter does not convey how and where [redacted] first became acquainted with the applicant and their subsequent relationship during the requisite period. The statement that the applicant "helped in work and culture related [sic] time to time" is an unintelligible statement that offers no support to [redacted]s assertions. Given these deficiencies, this letter is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On January 22, 2007, the director issued a notice of decision to the applicant. In denying the application, the director found that the credibility of [redacted]s assertion that the applicant resided with him at [redacted], Fresno, California 92724 from October 1981 until June 1985 is negated by adverse evidence. The director stated that CIS investigators obtained an aerial photograph of this address showing that it was still farmland in 1994. The director also found that the credibility of [redacted]s assertion that the applicant resided with him at [redacted], Bakersfield, California 93305 from July 1985 until August 1992 is negated by adverse evidence. The director stated that CIS investigators obtained an aerial photograph of this address showing that it is an industrial property. The director determined that the applicant had not submitted supporting affidavits (statements) that are credible and verifiable. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that he has been residing in the United States since 1981. The applicant states that the addresses on his application are old and he may have forgotten them. The applicant states that due to this reason, there could be a mistake in the addresses. The applicant furnishes a letter and birth certificate from [redacted] as additional corroborating evidence.

The letter from [redacted], dated January 25, 2007, provides, "I [redacted] resident of, [redacted] California, state that I know [redacted], since 1981 till now. He used to come to my house, now we both live in Washington and still we know each other . . . ." This letter neglects to explain the origin of the information being attested to. The letter does not convey how and where [redacted] first became acquainted with the applicant and their subsequent relationship during the requisite period. Notably, the letter does not indicate that [redacted] first met the applicant in the United States. Given these deficiencies, this letter is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The director's denial notice cites to adverse information that negates the applicant's claim of residence in Fresno, California and Bakersfield, California during 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 applicant submits competent objective evidence pointing to where the truth lies.

Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, the applicant asserts that there may be mistakes on the addresses shown on his application because they are old. This assertion does not explain the reason these addresses are repeated in the letters from [redacted] and [redacted]. Moreover, the applicant fails to submit additional documentation to amend and correct the purported mistakes in his residential address. Consequently, the applicant has not provided a reasonable explanation of the apparent inconsistencies identified by the director, and he has failed to submit any relevant objective evidence to overcome these inconsistencies.

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 the applicant 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.