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

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FILE: [redacted] Office: LOS ANGELES Date: JUL 30 2008

MSC-06 160-25544

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 district 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.

On appeal, the applicant submits a brief statement and additional documentation.

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).

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 district 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 district director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the district 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 district director can articulate a material doubt, it is appropriate for the district director to either request additional evidence or, if that doubt leads the district 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.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary resident under Section 245A of the Act, on December 31, 2005. On the Form I-687, the applicant indicated that he had entered the United States in 1981 and had been absent on only two occasions – to visit family in Mexico from December 1986 to January 1987, and in 1992 when he voluntarily departed.

In support of the application, the applicant provided the following documentation in an attempt to establish his entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through December 31, 2005:

- An affidavit, dated December 31, 2005, from the applicant stating that he initially entered the United States without inspection in 1981 in order to improve his living standard and prosperity, and that he has resided in the United States since then in an undocumented status except for a one-month trip to Mexico in 1986 to see his family, after which he again entered the United States without inspection.

  An affidavit, dated November 2, 2006, from a resident of Ventura, California, stating that she has known the applicant for 24 years, and that the applicant was her tenant at [redacted] California, from 1981 to 1988.

- An affidavit, dated November 2, 2006, from [redacted], a resident of Port Hueneme, California, stating that he has known the applicant for 18 years, and that the applicant was his tenant at [redacted] from 1988 to 1992.

- An affidavit, dated November 2, 2006, from [redacted], a resident of Camarillo, California, stating that he has known the applicant for 15 years, and

that the applicant has been his tenant at [redacted] California, since 1992. [redacted] provided proof of his identification – photocopies of his California Driver License and the identification page from his United States passport.

The applicant was interviewed in connection with his application on November 3, 2006. At that time he testified, in part, to the following: He first entered the United States in October 1981 and lived with [redacted] for three to four months in Oxnard, California. He then rented a room from [redacted] on [redacted] until 1988. His first absence from the United States was due to a deportation in 1986, but he quickly returned illegally. His second absence was in 1989 or 1990.

The district director denied the application on December 4, 2006. In denying the application, the district director noted that the affidavits from [redacted] were not accompanied by proof of identification, and that [redacted] attested to being born on August 14, 1977, therefore, she was only four years old at the time she and the applicant claimed he had rented a room from her.

On appeal, the applicant submits photocopies of California Driver Licenses belonging to Ms. [redacted] The applicant also states that there was an error in the affidavit from Ms. [redacted] that she had intended the affidavit to read that it was her mother, [redacted] who was the landlord and that he had, in fact, rented a room from [redacted] at [redacted] Oxnard, California, from 1981 to 1988.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1981 to 1988 or of entry to the United States before January 1, 1982, except for his own assertions and the affidavits noted above. The affidavits lack credibility and probative value. The affiants are vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims of alleged relationships with the applicant over a 15 to 24 year time span. As such, the statements can be only be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. Moreover, the record shows that the applicant has contradicted information provided regarding his absences from the United States.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous unlawful residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, 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.