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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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FILE:

MSC 05 218 10599

Office: LOS ANGELES

Date:

NOV 06 2008

IN RE:

Applicant:

PETITION:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had given contradictory information in a February 10, 2003 interview for adjustment of status pursuant to the LIFE Act and in a written statement submitted dated August 9, 1994. The director found that the conflicting information submitted regarding the applicant's residence and employment impugned the applicant's credibility; thus the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Due to the discrepancies in the applicant's testimony, the director denied the application.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 (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 establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On appeal, the applicant reiterates his previous claims that he first entered the United States in May of 1980, resided in Chicago, Illinois until he returned to Mexico in December 1980 and illegally re-entered the United States in January 1981. The applicant indicates that he lived in Chicago to May 1981 and then moved to Los Angeles, California until the present time. The applicant notes that he visited friends in Chicago, Illinois on several occasions between 1981 and 1986. The applicant states that he worked for a specific employer in California from 1981 to 1986 and the record includes a letter from that employer. The applicant states that he does not understand what contradictory information he has supplied as well as noting that it is difficult to remember dates from over 25 years ago.

Upon review of the record, the AAO finds that the applicant has established his residence in the United States since 1984. The applicant has provided Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements for 1984, 1986, 1987, and 1988 as well as IRS Forms 1040 and 1040A, Individual Tax Returns, for 1985 through 1992. The applicant has also provided copies of pay stubs for several of these years. The record, however, does not contain substantive evidence of the applicant's entry into the United States prior to January 1, 1982 and continuous residence in the United States in 1982 and 1983. The AAO will focus on the documentation in the record that is pertinent to this time period to determine whether the applicant has established his entry prior to January 1, 1982 and continuous residence in the United States in 1982 and 1983.

On the Form I-687, the applicant listed his addresses as: [REDACTED] located within a California zip code – 90015 from May 1981 to May 1984; and [REDACTED] California 90007 from May 1981 to October 1986. The interviewing Citizenship and Immigration (CIS) officer has placed an "or" in red ink between these two addresses. The CIS officer also notes in red ink that the applicant lived in Chicago from 1980 to 1981. The applicant also listed his employer from June 1981 to June 1986 as "DB," located at [REDACTED], Los Angeles, California.

The record of proceeding also includes an unfiled Form I-687 dated July 29, 1993. On this Form I-687, the applicant listed his addresses as: [REDACTED], Los Angeles, California from 1981 to 1986; and [REDACTED], Los Angeles, California from 1987 to 1989. The applicant listed his employer from 1981 to 1986 as [REDACTED]. The record also contains a letter dated November 22, 1988 on the letterhead of [REDACTED] located at [REDACTED], Los Angeles, California. The letter is signed by [REDACTED], as owner of the business. The owner declares that the applicant,

living at [REDACTED], Los Angeles, California, was employed by [REDACTED] from June 1981 to December 1986.

The record includes the interview notes of a CIS officer that indicate the applicant stated: that he first entered the United States in June 1980 and lived with some friends in Chicago; that he worked for six years from November 1980 to December 1986 for "[REDACTED]"; that he was paid by check; and that he worked as a machine operator.

The record also includes: a photocopy of an envelope with the applicant's name and an address in Chicago as the return address and a Chicago post mark dated January 1981; a photocopy of a Western Union telegraphic money order receipt identifying the applicant as the remitter which is date stamped October 24, 1982 at the Western Union branch office in Chicago, Illinois; a photocopy of a Western Union telegraphic money order receipt identifying the applicant as the remitter which is date stamped October (illegible) 1982 identifying the location of the Western Union branch office as in Chicago, Illinois; a photocopy of an envelope with the applicant's name and an address in Los Angeles as the return address and a Los Angeles post mark dated August 24, 1983; a photocopy of an envelope with the applicant's name and an address in Los Angeles as the return address and a Los Angeles post mark dated October 18, 1983; and a photocopy of an envelope with the applicant's name and an address in Los Angeles as the return address and a Los Angeles post mark dated November 8, 1983.

The AAO has reviewed the record and finds the officer's notes taken during the February 10, 2003 interview perfunctory and easily subject to different interpretations. However, the documentation in the record for the 1981 to 1983 time period is deficient. The letter from the applicant's claimed employer fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Although the letter submitted appears to be on the employer's letterhead, the letter-writer does not declare that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The letter, thus, has minimal probative value in establishing the applicant's employment during this time period. The AAO also observes that the applicant has not clearly set out his employer's name in the Form I-687 that is the subject of the appeal or in the unfiled Form I-687, but rather refers to his employer as "DB" and "Young Fashion."

The AAO also takes note that the applicant did not initially list an address in Chicago, Illinois on either the Form I-687 that is the subject of this appeal or the unfiled Form I-687. Only at his February 10, 2003 does he add a Chicago location to the Form I-687 that is the subject of this appeal. The failure to initially include this information casts doubt on the authenticity of the post marked January 1981 envelope and the October 1982 receipts submitted to show that the applicant resided in or was visiting Chicago, Illinois. The AAO observes that the receipts dated in October 1982 are for a time period subsequent to the date the applicant indicates he moved to and was employed in Los Angeles. Although the applicant states on appeal, that he visited friends in Chicago, Illinois on several occasions between 1981 and 1986, the AAO finds the receipts have minimal probative value. The receipts are indicative of two independent events in October 1982 when the applicant was living and working in Los Angeles, California and thus are not probative for establishing continuous residency during this time period.

Moreover, the evidentiary rule at 8 C.F.R. § 245a.2(d)(6) provides: "[i]n judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." In light of this evidentiary rule, the fact that photocopies would not clearly indicate address

alterations or substitutions as would originals of the envelopes and receipts coupled with the inconsistencies and late additions to the applicant's testimony; the AAO does not accord any significant evidentiary weight to the photocopies of envelopes and receipts.

In this instance, the applicant has not submitted probative evidence, including contemporaneous documents, which tends to corroborate his claim of entry into the United States prior to January 1, 1982 and residence in the United States in 1982 and 1983. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished to establish residence in 1982 and 1982 and the inconsistencies in the applicant's testimony are insufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

These deficient documents comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through 1983. The applicant's statement, the employer's letter, and the envelopes and receipts lack credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of credible supporting documentation, it is concluded that 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. The appeal will be dismissed.

Beyond the decision of the director, the AAO observes that the applicant is inadmissible as he admittedly presented a fraudulent Resident Alien Card at the San Ysidro Port of Entry and was ordered deported on June 18, 1999. The AAO notes that the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability, with appropriate fee on September 29, 2005; however the record includes a denial of the waiver application on August 14, 2006. In a separate decision issued this date, the AAO dismissed the appeal of the director's denial of the Application for Waiver of Grounds of Excludability. For this additional reason, the petition may not be approved.

ORDER: The appeal is dismissed. This constitutes the final notice of eligibility.