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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-032-11492

Office: LOS ANGELES

Date: NOV 19 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: 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 "John F. Grissom".

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 director of the Los Angeles office. 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. The director identified inconsistencies in the applicant's statements and evidence regarding his departures from the United States both during and after the requisite period.

It is noted that the director erroneously indicated that the applicant failed to establish his continuous unlawful presence in the United States from prior to January 1, 1982 through May 4, 1988, rather than that he failed to establish his continuous residence from before January 1, 1982 until he attempted to file for temporary resident status during the initial filing period. The director also considered the applicant's absences falling outside the requisite period when determining whether the applicant established continuous residence throughout the requisite period. Any inconsistencies related to the applicant's absences falling outside the requisite period are not directly relevant to the question of whether the applicant meets the residency requirements for temporary resident status. However, these inconsistencies may cast some doubt on the applicant's account of his activities during the requisite period. The director's statement regarding the residency requirements for temporary resident status is withdrawn. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant stated that he has established by a preponderance of the evidence that he qualifies for temporary resident status. The applicant attempted to address the inconsistencies raised by the director regarding his absences from the United States. He stated that he had an additional absence from the United States that he failed to mention on his Form I-687

application. The applicant also stated that he has been in the United States for more than 26 years and it is difficult to remember everything that happened 18 years ago.

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 November 1, 2005. At part #4 of the Form I-687 application where applicants were asked to list other names used, the applicant stated, “██████████” At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant listed only ██████████ Santa Ana, California from 1980 to 1988 during the requisite period. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only two trips to Mexico for family emergencies, from May 13, 1987 to May 20, 1987 and from June 20, 1989 to June 30, 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Maintenance for ██████████ Cleaning Co. Inc. during 1980; landscaping for ██████████ during 1981; landscaping for ██████████. from 1982 to 1983; and self-employed landscaping at various places from 1984 to 1990.

In an attempt to establish continuous unlawful residence in the United States during the requisite period, the applicant provided voluminous documentation. Documents relating to the requisite period include copies of Form W-2 Wage and Tax Statements and Form 1040 U.S. Individual Income Tax Returns under the applicant’s alias; a summary of his FICA earnings, his Social Security statement, and a Social Security earnings record in his name; two attestations from one individual; and a letter written in the Spanish language.

The W-2 forms provided by the applicant list the employee’s name as ██████████. The applicant’s failure to provide supporting evidence besides his own statement indicating that he used the name ██████████ limits the evidentiary value of the W-2 forms. The applicant provided a copy of a Form W-2 for employment in 1980 for ██████████ Cleaning Co., Inc. This document is consistent with the applicant’s employment and address as listed on the Form I-687 application and, therefore, constitutes some limited evidence that the applicant resided in the United States at some time during 1980. The applicant provided a copy of a Form W-2 for employment in 1981 with ██████████, Vista - Landscape. This document is consistent with the applicant’s employment and address as listed on the Form I-687 application and, therefore, constitutes some limited evidence that the applicant resided in the United States at some time during 1981. The applicant provided a copy of a Form W-2 for employment in 1982 with ██████████, Vista - Landscape. This document is somewhat inconsistent with the applicant’s employment as listed on the Form I-687 application, where he failed to indicate that he was employed with ██████████ in 1982. This

inconsistency casts some doubt on the applicant's account of his employment during the requisite period. The applicant provided copies of W-2 forms for employment in 1982 and 1983 with [REDACTED] Truss Corporation. These documents are consistent with the applicant's employment and address as listed on the Form I-687 application and, therefore, constitute some limited evidence that the applicant resided in the United States at some time during 1982 and 1983. All of the above listed W-2 Forms are accompanied by 1040 forms listing the name "[REDACTED]" and the address provided by the applicant on his Form I-687 application. Again, the applicant's failure to provide independent evidence of his use of an alias, such as a letter from an employer, detracts from the evidentiary value of the 1040 forms. The applicant's failure to provide evidence from the Internal Revenue Service (IRS) that he filed the 1040 forms also detracts from the evidentiary value of the forms.

The applicant also provided a copy of W-2 forms for employment in 1983 with Levitt Homes, Inc., and two employers whose names are illegible. The first document conflicts with the information on the applicant's Form I-687, where he failed to list this employer when asked to list all employment in the United States. This inconsistency casts doubt on the applicant's account of his activities during the requisite period and, as a result, on his claim to have resided in the United States throughout the requisite period. The other two documents carry no evidentiary weight.

The applicant also provided a copy of a Form W-2 for employment in 1987 with [REDACTED]. This document is consistent with the applicant's employment and address as listed on Form I-687 application and, therefore, constitutes some limited evidence that the applicant resided in the United States at some time during 1987. The fact that this document is not accompanied by a Form 1040 for the year 1987 detracts somewhat from its evidentiary value.

The applicant also provided a summary of his FICA earnings, his Social Security statement, and his Social Security earnings record. The FICA summary and Social Security statement list the applicant's name and indicate that he received earnings every year from 1980 through 1983 and then not again until 1990. This is inconsistent with the 1987 Form W-2 indicating that the applicant was employed with [REDACTED] during 1987. This inconsistency casts some doubt on the applicant's claim to have resided in the United States during 1987. The top of the first page of the Social Security earnings record states, "We have completed our review of your earnings record. Based on the information we received, we changed our records to show the following amounts for the employment you asked us about." The earnings record lists the applicant's name and lists the following employment during the requisite period: American Labor Core and Frick Construction, Inc. in 1980; [REDACTED] in 1981 and 1982; [REDACTED] Corporation in 1982 and 1983; and [REDACTED] & Co. Inc. and [REDACTED] Homes Corporation in 1983. This information is inconsistent with the applicant's Form I-687, where he failed to indicate that he had worked for American Labor [REDACTED] & Co. Inc., or [REDACTED] Homes Corporation. These inconsistencies cast additional doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The record also includes two attestations from [REDACTED]. The first attestation, an affidavit dated March 12, 1996, states that to the affiant's personal knowledge the applicant has resided with

the affiant at [REDACTED] in California from May 1980 to September 1987. The second attestation, a notarized declaration dated May 16, 2003, states that the applicant lived with the affiant at [REDACTED] [sic] St.” in California from 1980 to 1988. The first attestation is somewhat inconsistent with the applicant’s Form I-687 and the other attestation in that it indicates that the applicant stopped living with [REDACTED] in 1987 instead of in 1988. In addition, these attestations lack detail regarding the location, date and circumstances of the affiant’s first meeting with the applicant, and how they came to be living together. Considering these deficiencies, these documents will be given very little weight in establishing that the applicant resided in the United States throughout the requisite period.

The applicant also submitted a letter addressed to him and written in the Spanish language. As the letter does not contain the applicant’s address in the United States and is not accompanied by an English translation, it will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The record includes a Form I-687 application for temporary resident status signed by the applicant under penalty of perjury on December 30, 1994 and submitted to establish class membership pursuant to the CSS/Newman Settlement Agreements. At part #32 where applicants were asked to list all sons and daughters, the applicant failed to list any children. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses: [REDACTED], Santa Ana, California from April 1981 to February 1984 and [REDACTED] [sic]” Apt. [REDACTED] Pomona, California from February 1984 to May 1988. This information is inconsistent with the applicant’s current Form I-687 application and other documents, which indicate that the applicant resided at the [REDACTED] address throughout the requisite period. At part #35 where applicants were asked to list absences from the United States since entry, the applicant listed only one trip to Mexico for a family visit from November 1987 to December 1988. This is inconsistent with the applicant’s current Form I-687, where he indicated his only absence from the United States during the requisite period was in May 1987. At part #36 where applicants were asked to list all employment in the United States since first entry, the applicant listed only employment with [REDACTED] from June 1981 to February 1984 and with Hanson Truss Inc. from March 1984 to present. This information is inconsistent with the current Form I-687 where the applicant listed entirely conflicting employers and dates of employment. These inconsistencies cast serious doubt on the applicant’s claim to have resided in the United States throughout the requisite period. In addition, the applicant’s failure to list on the 1994 Form I-687 most of the positions for which he presented W-2 forms casts serious doubt on the authenticity of the W-2 forms. This is particularly true given that the applicant’s 1994 account of his employment was provided much closer in time to the dates of his alleged employment than he provided the W-2 forms to document the employment.

The record indicates that the applicant was interviewed by an immigration officer on April 21, 2006. The officer asked the applicant when his wife first entered the United States, and the applicant stated, “1990.” The applicant indicated that his first absence from the United States was from May 13, 1987 to May 20, 1987 and that his second absence was from June 20, 1989 to

June 30, 1989. When asked by the officer, the applicant stated that he was not in Mexico in 1988. The applicant also stated that he is the biological father of his two children that were born in Mexico. This information is inconsistent with the applicant's 1994 Form I-687, where he indicated that he had no children and that his only absence from the United States during the requisite period was November to December of 1987. These inconsistencies cast further doubt on the applicant's claim of continuous residence.

The record also includes a Form I-485 Application to Register Permanent Resident or Adjust Status signed by the applicant under penalty of perjury on July 20, 2001. At part #3B, where applicants were asked to list all sons and daughters, the applicant indicated that he had a son born in Mexico in November 1987. This information appears to conflict with the applicant's statement on his current Form I-687, as well as his statements in the interview with an immigration officer where he indicated that his wife did not enter the United States prior to 1990, he only traveled to Mexico in May 1987 during the requisite period, and his children born in Mexico are his biological children. These inconsistencies cast doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application the director concluded 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 identified inconsistencies in the applicant's statements and evidence regarding his departures from the United States both during and after the requisite period. Specifically, the director identified the inconsistency between the applicant's claimed absences from the United States and the birth of his son in Mexico less than eight months later. As addressed above, the other inconsistencies raised by the director that relate to the applicant's absences falling outside the requisite period are not directly relevant to the question of whether the applicant meets the residency requirements for temporary resident status.

On appeal, the applicant stated that he has established by a preponderance of the evidence that he qualifies for temporary resident status. In response to the inconsistencies raised by the director, the applicant stated, "[Y]ou mentioned that I departed the country in [sic] May 13 and returned on May 20, 1987 and that my biological child was born in December 22, 1987, what is wrong with my departure in May?" This information is found not to overcome the inconsistency raised by the director. The applicant has failed to provide a reasonable explanation for this inconsistency and support the explanation with independent, objective evidence. 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). The applicant also stated that he has been in the United States for more than 26 years and it is difficult to remember everything that happened 18 years ago.

On September 25, 2008, the AAO contacted the applicant to inform him of the inconsistencies in the record related to his claim of continuous residence throughout the requisite period. The AAO provided the applicant with 15 days in which to submit additional evidence to overcome the AAO's finding that he had sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. In his response, the applicant provided only evidence that did not relate to the requisite period or that he had previously submitted. Therefore, the applicant has failed to overcome the inconsistencies in the record and the AAO's related finding that he sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact.

In summary, the applicant has provided documentation of employment in the United States that is listed under an alias, and has failed to provide independent evidence of his use of this alias. Much of the employment documentation conflicts with information he provided on the current Form I-687. The applicant also provided two attestations from the same individual that are somewhat inconsistent with each other and lack detail. The record contains additional forms signed by the applicant under penalty of perjury that conflict with the applicant's statements on the current Form I-687, his oral statements in his interview with an immigration officer, and his later submitted documents supporting his claim of employment in the United States during the requisite period. These inconsistencies cast serious doubt on the authenticity of the employment documents and on the applicant's claim to have resided continuously in the United States during the requisite period.

The absence of sufficient probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in the United States for the entire requisite period, as well as the credibility of the documents submitted in support 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 its amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, as the record reflects that the applicant has submitted contradictory applications and made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact, a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).



ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.