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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Room 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES Date: NOV 26 2008

MSC-05-250-21288

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had not met his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in an unlawful status for the requisite period. The director noted inconsistencies in the applicant's date of first arrival in the United States. Specifically, in 1998 the applicant testified before an Immigration Judge (IJ) in connection with his application for suspension of deportation pursuant to then Section 244 of the Act that he first came to the United States in March 1986; however, in an interview with a United States Citizenship and Immigration Services (USCIS) officer conducted in 1997 the applicant stated under oath that he had started to reside in the United States in 1984.

On appeal, the applicant submits a brief in which he asserts that he initially arrived in the United States in 1981. Additionally, as to the inconsistencies in the record about his initial entry, the applicant states that he felt pressured by the immigration officer to sign a declaration in Spanish in 1986, and that he was confused with the date of his entries into the United States upon answering the IJ's questions.

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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* 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 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 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 sole issue in this case is whether the applicant entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the requisite period of time.

Along with his Form I-687, the applicant submitted four signed statements from friends and a letter from a former employer, all of which attest to the applicant's residence in the United States since 1981. The statements from [redacted] are identical in that they both claimed to have known the applicant through playing soccer together in 1981 and have maintained a good friendship ever since. Neither [redacted] however, provide detailed information as to the applicant's residence during the requisite period, state how frequent they met with the applicant or provide other details about the relationship to establish the credibility of the assertions. Their brief reference to playing soccer together in 1981 is not

persuasive to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

[redacted] claims in his letter that he has personal knowledge of the applicant's continuous residence in the United States since 1981 and that he met the applicant at La Guadalupana market in Pacoima, California, where the applicant worked at that time. Mr. [redacted] statement, however, is in direct conflict with his own testimony before the IJ during the applicant's suspension of deportation hearing in 1998. [redacted] said at the hearing that he first met the applicant in 1986 when he started to work at the Village Bar-B-Q. Thus, his testimony will not be considered.

The letter from [redacted] states that the applicant, who is his nephew, has been living the United States from 1981 and has been invited to many family gatherings. This letter has minimal probative value as evidence of the applicant's residence in the United States during the requisite period, because it fails to provide any details demonstrating the affiant's personal knowledge of the applicant's residence in the United States. There are no details regarding how or where [redacted] met the applicant in the United States and how often he met with or talked to the applicant during the requisite period.

The remaining evidence to be considered from the record is a letter dated December 19, 1989 from [redacted], Dean of the School of Law, and typed on the University of West Los Angeles letterhead, in which [redacted] stated that he had been acquainted with and employed the applicant for almost five years. This letter fails to comply with the regulatory requirements for employment letters under 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter must include the alien's address at the time of employment, the exact period of employment, periods of layoff, duties with the company, whether or not the information was taken from official company records, and where the records are located and whether USCIS may have access to the records. None of those specifics are included in this letter. Additionally, the applicant failed to list in his Form I-687 employment with [redacted] or the University of West Los Angeles. 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. For these reasons, this letter has no probative value as evidence of the applicant's continuous residence in an unlawful status during the requisite period.

On appeal, the applicant asserts that he initially arrived in the United States in 1981 and states that he was confused with the date of his entries into the United States. The hearing transcript indicates that on three different occasions during the hearing, the applicant said that he came to the United States in 1986. The AAO notes that the applicant stated on his Form I-589 application for asylum

that he attended junior high school in Mexico until June, 1982 and testified at his asylum hearing that he first entered the United States on March 15, 1986.

The applicant's assertion on appeal that he was confused, without submission of independent objective evidence, is insufficient to explain or reconcile such inconsistencies. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). The applicant has not submitted any independent and objective evidence to show his entry into the United States in 1981.

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 lack of detail 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 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.

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