U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: APR 07 2009

MSC-06-095-19623

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:

[redacted]

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.

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, New York, and 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 denied the application after determining 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 noted that the applicant had failed to respond to the Notice of Intent to Deny (NOID) dated July 21, 2006. The director noted in the NOID that the applicant's testimony during his immigration interview with respect to his absences from the United States in 1983, 1987 and 1988 was confusing, and that the discrepancies called into question the veracity of the applicant's statements. The director further noted that the identification cards submitted by the applicant as evidence could not be authenticated and that the issuance of such cards did not prove the applicant's continuous residence in the United States. The director also noted that the affidavits submitted on behalf of the applicant did not appear to be credible or amenable to verification. 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, counsel asserts that the applicant did respond to the NOID and that he was including a copy of a US Postal Service Express Mail receipt indicating that the package was delivered to [redacted] and signed for on August 18, 2006. Counsel also asserts that the applicant submitted affidavits from his friends in his attempt to verify his presence in the United States. Counsel asserts that the applicant also submitted translated copies of his marriage certificate and his father's death certificate to show that he traveled to Mexico in 1983 to get married; in 1996 for his father's funeral; and in 1997 for the one year anniversary of his father's death. Counsel further asserts that the applicant is providing copies of identity documents for the affiants who previously submitted their affidavits. The AAO accepts counsel's explanation and will conduct a *de novo* review of the evidence including the submission in response to the NOID.

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. *See* 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted the following attestations as evidence:

- An affidavit from [redacted] of New York in which he stated that the applicant has been residing in the United States since 1979. He also stated that their families are close and that they get together often during community functions and that they visit each other on weekends.

- An affidavit from [redacted] of New York in which he stated that he and the applicant entered the United States from Mexico together in 1979 and that the applicant has been living and working in the country since.

- **An affidavit from** [redacted] of New York in which he stated that the applicant has resided and been working in the United States since 1979 and that his knowledge is based upon the fact that they knew each other in Mexico and that they keep in contact with each other since they came to New York.

- **An affidavit from** [redacted] of Houston, Texas in which he stated that he has known the applicant from September 1979 to 1983 and that they met through a mutual friend in Houston, Texas. He also stated that he and the applicant have kept in constant contact with each other in person and by telephone.

- An affidavit from [redacted] of Houston, Texas in which he stated that he met the applicant in February of 1979 while visiting with mutual friends. He also stated that they keep in contact with each other although they live in different cities.

- Affidavits from [redacted] and [redacted] of Houston, Texas in which they stated that they have known the applicant since 1981and 1982 respectively, and that they met the applicant at a mutual friend's house where the applicant was staying. The affiants also stated that the applicant subsequently moved to New York and that they still communicate with him once in a while.

- An affidavit from [redacted] of Houston, Texas in which he stated that he has known the applicant since 1980 when he came to live with the affiant. The affiant also stated that the applicant moved after three months, to live with other mutual friends and that they continue to communicate with each other.

The affidavits submitted are generic and lacking in detail, and they are neither collectively nor individually sufficient to prove the assertions made. The affiants fail to specify the applicant's place of residence during the requisite period. The affiants who stated that they met the applicant through a mutual friend have failed to identify the mutual friend. Although affiants [redacted], and [redacted] of New York stated that they have known the applicant since 1979, the record shows that the applicant did not locate to Brooklyn, New York until May of 1993. This inconsistency casts doubt on the applicant's proof. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to

resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period. He has failed to overcome the director's basis for denial. Although the applicant states on appeal that he was absent from the United States in 1983 and was married on April 23, 1983, he has failed to demonstrate the length of time that he was in Mexico. The affidavits submitted are lacking in detail.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detracts from the credibility of this 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 applicant's reliance on affidavits that are lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.