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FILE: [REDACTED] Office: LOS ANGELES Date: **APR 29 2009**
MSC 06 097 28440

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.

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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant resubmits notarized statements and evidence of the affiant's residence in the United States along with other documentation for consideration.

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).

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).

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.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence

for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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.

The pertinent evidence in the record is described below.

1. A notarized statement from [REDACTED] who states the applicant has resided in the United States since 1981.
2. Notarized statements from [REDACTED] and [REDACTED] who state they have known the applicant to have resided in the United States since 1983.
3. A notarized statement from [REDACTED] who states the applicant lived at [REDACTED], Houston, Texas, in 1982 thru 1983.
4. A notarized statement from [REDACTED] who states the applicant lived at [REDACTED] Houston, Texas, in 1982 thru 1983.
5. U.S. Postal Service Forms 3806, Receipt for Registered Mail, showing the applicant sent mail to a person in Mexico on September 21, 1981 and on January 18, 1982 from Houston, Texas.
6. A letter from [REDACTED] dated March 11, 1997 who states the applicant worked for [REDACTED] in Valencia, California, since November 17, 1987.
7. The applicant’s IRS Form W-2, Wage and Tax Statement, for 1987 from [REDACTED] in Anaheim, California.
8. Two of the applicant’s pay slips from [REDACTED] in Anaheim, California over the period from December 15, 1987 to June 15, 1988.
9. The applicant’s California identification card issued November 3, 1987

The notarized statements (Items # 1 and # 2 above) have been reviewed. These documents are not sufficiently probative to establish the applicant's continuous residence in the United States from January 1, 1982 through the requisite time period. The notarized statements from [REDACTED] and [REDACTED] (Items # 3 and # 4) state that the applicant lived at [REDACTED]

Houston Texas, in 1982 thru 1983. However, on his Form I-687, he stated that he lived at [REDACTED] in Houston, Texas, from January 1982 to sometime in 1983 and at an address in California for the remainder of 1983. The difference between the applicant's statements on his Form I-687 and these notarized statements that he submitted cast doubt on his claim that he resided continuously in the United States during the requisite period.

Based on the U.S. Postal Service Forms 3806, the employment letter, his IRS Form W-2, his pay slips and his California identification card (Items # 5 thru # 9) AAO accepts that he resided in the United States for portions of the requisite period.

On his Form I-687, filed on January 5, 2006 he states that his only absence from the United States after his first entry in 1981 was a family visit in October 1987 and he returned in the same month. However, on his Form I-215W, Record of Sworn Statement in Affidavit Form, dated November 15, 2006, he states that he departed the United States in October 1999 and returned that same month. The difference between the applicant's statement on his Form I-687 and his Form I-215W casts doubt on his claim that he resided continuously in the United States during the requisite period.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's residential and absence histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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