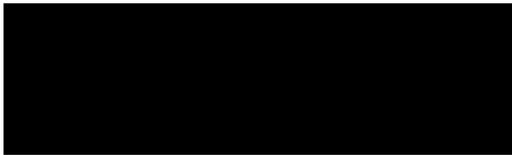




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 172 11602

Office: LOS ANGELES

Date: **DEC 02 2009**

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, and 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, [REDACTED]. 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.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

On appeal, the applicant asserts that he has been continuously residing in the United States since 1980 and was employed as a landscaper during the requisite period. The applicant requests that his application be reconsidered.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- Copies of the Form 1040, U.S. Individual Income Tax Return, for 1981 to 1988.
- A copy of page one of a Form 540A, California Resident Income Tax Return, for 1983.
- Several receipts and an earning statement dated during the requisite period.

- A Form 1099 NEC, Nonemployee Compensation, for 1982 and a Form 1099-MISC, Miscellaneous Income, for 1983 from [REDACTED] in Los Angeles, California.
- A letter dated September 6, 2004, from [REDACTED] Inc., who indicated that the applicant was in his employ from June 1981 to May 1985.

On August 23, 2005, a Form I-72 was issued requesting the applicant to furnish proof of his residence in the United States from before 1982 to 1988. The applicant, in response, submitted:

- Affidavits from [REDACTED] who attested to the applicant's residence in Los Angeles, California since 1981. Mr. [REDACTED] indicated that he was the manager at [REDACTED] where the applicant resided from 1981 to 1986. [REDACTED] indicated that they met the applicant at a park playing soccer and have remained friends since that time. [REDACTED] indicated that he met the applicant at a party of a mutual friend and since that time they has seen each other often.
- Affidavits from [REDACTED] who attested to the applicant's residence in Los Angeles, California since 1981. [REDACTED] indicated that he met the applicant at work, used to eat at the same lunch truck, and has remained friends since that time. [REDACTED] indicated that he has rented equipment to the applicant since 1981 and has developed a friendship over the years. [REDACTED] attested to the applicant's moral character.
- Earning statements from [REDACTED] dated November 17, 1986 and during 1987.
- Several additional receipts and check stubs dated during the requisite period.
- A notice from the Internal Revenue Service dated November 24, 2003, reminding the applicant that he has not paid his taxes for the tax period December 31, 1985.
- A PS Form 3806, Receipt for Registered Mail, postmarked April 3, 1981.

On October 14, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through the date he attempted to file his application.

The applicant, in response, submitted a document from the Internal Revenue Service (IRS) dated November 9, 2005, regarding income tax returns filed in 1981, 1982 and 1984 through 1989.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on December 19, 2005.

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).

The applicant's statements on appeal are noted. However, during the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in this country from prior to January 1, 1982 through the date he attempted to file his application. Specifically:

1. The earning statements and receipts dated during the period in question could not be considered as the applicant's name was not listed on the documents.
2. The employment letter from [REDACTED] attested to the applicant's employment at [REDACTED] from June 1981 to May 1985. In an attempt to verify this employment, an officer of the Service telephoned the phone number listed on the business card of [REDACTED]. The telephone number, however, was not in service. In addition, the letter lacked probative value as it failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i).
3. On his Form I-687 application, the applicant claimed employment at [REDACTED] during the requisite period; however, he did not provide any evidence to support his claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).
4. The applicant presented an affidavit from [REDACTED] who attested to being the manager of the building where the applicant resided from 1981 to 1986; however, no evidence such as a lease agreement, rent receipts or utilities bills were provided by the applicant to corroborate [REDACTED] affidavit.
5. The affidavits from the remaining affiants did not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period.
6. The AAO does not question the IRS documentation, as it appeared that based on documentation the applicant presented to the IRS, the agency imposed penalties and interests in 2003 for some or all of the tax years during the requisite period. However, it was not clear whether the tax returns were filed late or during the corresponding years.
7. The Individual Income Tax Return, Form 1040, for 1981 through 1988 and the California Resident Income Tax Return, Form 540A, for 1983 submitted with the Form

I-687 application were not signed or certified as being filed and, therefore, it could not be determined if they were filed late or during the corresponding years. Therefore, the income tax returns cannot serve to establish the applicant's residence in the United States during the requisite period.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO issued a notice to the applicant on September 14, 2009 informing him that it was the AAO's intent to dismiss his appeal based upon the inconsistencies noted above. The applicant was informed that he could submit documentation from the IRS detailing which years it imposed penalties and interest during the requisite period. The applicant was granted 30 days to provide evidence to overcome, fully and persuasively, these inconsistent findings. However, more than 60 days later, no correspondence has been presented by the applicant.

The applicant has not met his burden of proof given the credibility issues arising from the documentation provided along with the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period. 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 upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.