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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 05 007 10234

Office: LOS ANGELES

Date:

FEB 26 2009

IN RE:

Applicant:

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:

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. In so finding, the director stated:

In your interview under oath and in writing you stated you were present in the U.S. as of March, 1981. You submitted income tax copies and copies of your W2 forms for years 1984, 1985, 1986, and 1987. You submitted a work history record from the Social Security Administration which showed beginning earnings for yourself as of 2004. You submitted post office stamped envelopes from 1983, that were supposedly sent to someone in Mexico. These envelopes only had the U.S. stamp and they did not show a Mexican post office stamp. You submitted affidavits from known acquaintances. You failed to submit verifiable evidence from 1981 through 1988 such as rental receipts, bills from doctors or dentists, or sales receipts or other receipts given for services rendered. Your earliest submitted verifiable evidence began in 1984....

The director discussed and discounted twelve affidavits the applicant provided for the record.

On appeal, counsel argues that the director's argument that the applicant failed to submit verifiable evidence from 1981 through 1988 is incorrect because the director acknowledged that the applicant submitted income tax copies and copies of his W-2 forms for the years 1984, 1985, 1986, and 1987. Counsel indicates that although the director found that the envelopes the applicant submitted as evidence did not show a Mexican post office stamp, one of the envelopes from 1983 did show a U.S. postmark stamp and the Mexican postal stamp. Counsel submits another copy of this envelope 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 copy of an envelope sent by the applicant from Houston, Texas, postmarked January 3, 1983, to an address in Mexico.
2. A partial copy of the applicant's Mexican marriage certificate indicating that he was 22 years old and residing in Mexico when his marriage to [REDACTED] was registered on October 16. It is noted that although the year the marriage was registered is cut off from the copy submitted, the applicant was 22 years old on October 16, 1986.
3. A copy of a birth certificate for the applicant's son showing he was born on July 17, 1988 in Mexico.

On appeal, counsel indicates that although the director found that the envelopes the applicant submitted as evidence did not show a Mexican post office stamp, one of the envelopes from 1983 did show a U.S. postmark stamp and the Mexican postal stamp. Counsel submitted another copy of this envelope for consideration. It is noted that the copy that counsel forwards on appeal is easier to read than the first copy submitted and does show a Mexican post office stamp. (Item # 1 above). It is acknowledged that the applicant did submit his income tax copies and W-2 forms for the years 1984, 1985, 1986, and 1987.

The record contains two Forms I-687 forwarded for the record by the applicant. Although the first application is not certified by him, it contains his signed declaration dated May 10, 1991. The current Form I-687 was filed on October 7, 2004.

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 record contains two Forms I-687 forwarded for the record by the applicant. Although the first application is not certified by him, it contains his signed declaration dated May 10, 1991. The current Form I-687 was filed on October 7, 2004. On his first Form I-687, he states that his only absence from the United States after his first entry on May 12, 1981 was on August 22, 1987. On his current Form I-687 filed on October 7, 2004, the applicant stated that he left the United States to Mexico and returned during October 1982 and that the purpose of his trip was “V. D.” He also stated that he left the United States on August 22, 1987 and returned on September 19, 1987. The inconsistencies between the applicant’s statements on the Forms I-687 cast doubt on his claim that he resided continuously in the United States during the requisite period. Additionally, neither of the applications shows that he departed the United States in 1986 to be married in Mexico. (Item # 2).

Absent evidence to the contrary, the fact that the applicant was married in Mexico and was probably residing in Mexico at the time of the conception of his son (Item # 3), indicates that he was residing in that country in 1986 and 1987. It is noted that the applicant was provided the opportunity to persuade a United States Citizenship and Immigration Services Officer of the validity of his claim at his interview.

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 asserted residential histories on his Forms 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.