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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 05 249 14042

Office: LOS ANGELES

Date:

**JAN 23 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:

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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. 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. Specifically, the director noted that the applicant's social security records supplied in response to the director's Notice Of Intent To Deny (NOID) do not establish that the applicant earned wages in the United States from 1982 – 1986. The director further noted that “along with contradictory and conflicting residence evidence that was submitted along with your application, this information is insufficient to overcome the grounds for denial. . . .” The application was accordingly denied.

On appeal, the applicant states that minor errors should not affect the over-all decision on his application, and that he has submitted credible evidence in support of his claim. The applicant notes that his social security statement does not indicate that he earned United States wages from 1982 – 1986 because during that time frame, he was being paid in cash and not earning “enough money.” The applicant stated that the director erred in her decision and asked that his legalization application be reinstated.

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 245(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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant’s claim:

- [REDACTED] submitted an unsworn declaration (dated December 3, 2005) in support of the applicant’s claim wherein she stated, in pertinent part, that the applicant lived with her at [REDACTED] from 1978 to 1991;
- [REDACTED] submitted a notarized statement dated June 3, 1988 in support of a claim for immigration benefits by the applicant wherein she stated that the applicant (her nephew) has resided with her at [REDACTED], California since May of 1986. This affidavit contradicts the affiant’s statement of December 3, 2005 wherein she stated that the applicant

resided with her from 1978 – 1991. This inconsistency is material to the applicant’s claim as it bears directly upon the applicant’s residence during the requisite period;

- The record contains a diploma issued to the applicant from the “AIMEE Asociacion De Ingenieros Mecanicos Electricistas Y Electronicos” in Mexico in September of 1985. The applicant states on the Form I-687 that he resided in the United States from 1978 until the date of the application (June 6, 2005). On the Form I-687 in section 32 the applicant was asked to list all absences from the United States since entry, dating back to January 1, 1982. In that section, the applicant stated “none.” This inconsistency is material to the applicant’s claim as it has a direct bearing upon the applicant’s whereabouts and activities during the requisite period;
- The record contains a sworn statement from [REDACTED] dated June 23, 1988 wherein he stated that employment is available for the applicant with Miracles Electrical Contractors should the applicant obtain his legal status; and
- The record contains a copy of the applicant’s California driver’s license issued in 1987

While the record does contain information indicating that the applicant was in the United States prior to January 1, 1982, and at other times during the requisite period, it does not establish the applicant’s continuous residence in this country for the duration of the requisite period. The record contains material inconsistencies which are fatal to the applicant’s claim, and those inconsistencies are detailed above. The inconsistencies have not been explained in the record. For these reasons, the application must be denied. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant’s claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant’s claim.

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.