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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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JUL 16 2009

FILE: [REDACTED] Office: LOS ANGELES Date:
MSC-05-148-10713

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 applicant filed an appeal, but the National Benefits Center (NBC) rejected the appeal as untimely. Counsel for the applicant subsequently filed a motion to reconsider and submitted evidence to the NBC showing that the appeal was timely filed. The motion and the decision are now before the Administrative Appeals Office (AAO) on appeal. The AAO will *sua sponte* reopen the appeal and dismiss the appeal.

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 (together comprising the I-687 Application). The director denied the application and found the applicant statutorily ineligible for the benefit sought as he stated during the interview that he had never left the United States during the requisite period.

On appeal, counsel for the applicant contends that the applicant attempted to file the application for temporary resident status during the original legalization period but that application was rejected because of his brief, casual, and innocent departure from the United States between November 6, 1986 and May 4, 1988. Further, counsel asserts that the applicant has submitted sufficient credible evidence to show his continuous residence in the United States since 1980.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the entire requisite period.

The applicant stated at his interview on August 1, 2005 that he has resided in the United States continuously since January 1980. As evidence, the applicant submitted numerous documents including a photocopy of a registered mail receipt received in March 1980; photocopies of various receipts claimed to be received during the requisite period; photocopies of envelopes with Mexican stamps; a photocopy of a pay stub received in 1984 and photocopies of various pay stubs received between 1987 and 1989.

Upon review, the AAO finds that none of these documents is credible and probative as evidence of the applicant's continuous residence in the United States since before January 1, 1982. The registered mail receipt shows that the applicant's mother in Mexico sent a certified mail to the applicant in the United States, using a U.S. postal service registered mail form. No explanation has been provided to clarify how this was possible. The various receipts submitted do not have any address or other identification to verify whether they belong to the applicant. Further, these

receipts do not show when or to whom they were issued. The handwritten dates and descriptions on the receipts are also illegible to read.

The envelopes with Mexican stamps were sent to an address not listed on the applicant's Form I-687. One of the envelopes was returned to the sender. Additionally, the postmarks are illegible. The AAO cannot discern when these envelopes were mailed.

The AAO observes that the social security number listed on the pay stubs received from 1987 to 1989 is different from the social security number the applicant used in filing his individual tax returns from 1992 to 2003. The applicant fails to list his social security number or numbers on his Form I-687 application.

The applicant also provided a photocopy of his California identification card issued in August 1986 and his California driver's license issued in August 1987. The AAO finds that the photocopies of the applicant's California identification card and driver's license are probative evidence of the applicant's residence in the United States in 1986 and 1987. Nevertheless, the evidence submitted does not support the applicant's contention that he has resided continuously in the United States since before January 1, 1982.

To prove that he has resided continuously in the United States since before January 1, 1982 the applicant provided three witness statements. [REDACTED] claims that the applicant is his cousin and that he let his cousin stay in his home for free when his cousin first came to the United States in January 1980. [REDACTED] further states that the applicant did not go to school as he wanted to work to help his family in Mexico, but the applicant could not find any employment due to his young age. According to [REDACTED] the applicant cleaned the yard and helped around the house. [REDACTED] statement lacks probative value. [REDACTED] indicates that the applicant did not go to school, but he does not describe with sufficient detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of the applicant's residence with the family. He does not indicate how long the applicant stayed in his home or whether he or the applicant's parents supported the applicant financially during the period the applicant stayed in his home.

[REDACTED] attests to the applicant's physical presence and continuous residence in the United States since 1980 because the applicant is his cousin and he frequently saw the applicant at various family gatherings. [REDACTED] fails to state with specificity how he met the applicant in the United States, where the applicant lived during the period specified in his statement, or how often he met or talked with the applicant during that period. To be considered probative and credible, witness statements must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because the statement lacks relevant detail, it lacks probative value and has

minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

Similarly, the witness statement from [REDACTED] lacks probative value since [REDACTED] fails to provide specific detail as to how he first met the applicant in the United States, how he dates his acquaintance with the applicant in 1983, or whether he has direct personal knowledge of where the applicant resided during the requisite period.

Further, the applicant stated under oath during the interview and in writing that he did not leave the United States during the requisite period. His statement is consistent with the information at part #32 of his Form I-687 application, where he is requested to list all of his absences from the United States since entry. However, the applicant through his counsel claims on appeal that his application for temporary resident status was rejected because of his brief, casual, and innocent departure from the United States between November 6, 1986 and May 4, 1988. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. No additional evidence has been submitted to show that the applicant briefly left the United States between November 6, 1986 and May 4, 1988 or that the applicant attempted to file the application during the original legalization period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the lack of detail in the witness statements, and the inconsistencies in the record as noted above detract from the credibility of his 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 lack of credible supporting documentation and the inconsistencies in the record, it is concluded that 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.