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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 01 2009

MSC-06-098-13533

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, or *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 of the Los Angeles office, 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, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application, finding 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 time period. The director also found that the inconsistencies in the applicant's evidence regarding his absences from the United States resulted in the director being unable to verify the applicant's continuous residence in the United States during the requisite time period.

On appeal, the applicant asserts that he has established, by a preponderance of the evidence, his unlawful residence in the United States for the requisite time period. The applicant states that during his interview he was very nervous and became confused about the dates of his absences and employment. The applicant has not submitted any new evidence on appeal.

The AAO notes that the decision of the director incorrectly states at page two that the applicant has submitted proof of earnings starting from 1998. The record contains proof of the applicant's earnings beginning in 1983. However, the director's error is harmless because the AAO conducts a *de* novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).[1]

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) 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

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[1] 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 long been recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 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. 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, 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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. 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. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of an affidavit of relationship, an employment verification letter, and copies of medical insurance cards, W-2 forms, income tax returns, earnings records from the Social Security Administration, tax transcripts from the Internal Revenue Service, and copies of several receipts. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains a copy of an affidavit of relationship from [redacted] who states that he has known of the arrival of the applicant since 1981, when the affiant met the applicant through a mutual friend. Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statement fails to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witness does not state how he dates his initial meeting with the applicant, how frequently he had contact with the applicant, and how he had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that the witness's statement does not indicate that his assertions are probably true. Therefore, the affidavit of [redacted] has minimal probative value.

The applicant submitted a copy of an employment verification letter from [redacted], Director of Human Resources of American Products Company. [redacted] states that the applicant worked for the company as a machine operator from February 14, 1983 to December 17, 1984 and from March 24, 1986 onward.[2] However, in the instant I-687 application the applicant states that he worked for this company from 1982 through 1988 as a landscaper. In addition, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). The copy of the employment verification letter appears to have multiple alterations, raising doubts as to the veracity of the information contained in the letter. Due to the stated inconsistencies and apparent alterations contained in this letter the statement of [redacted] has minimal probative value.

Furthermore, the employment verification letter of [redacted] fails to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). Although the employment verification letter states that some of the information in the letter was obtained from company records and some information was obtained from

[2] The employment verification letter is dated October 22, 1987.

the applicant, the letter does not state what information was obtained from each source. In addition, the letter fails to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letter does not state how the witness was able to date the applicant's employment. It is unclear to what degree the witness may have referred to his own recollection, to the recollection of the applicant, or to records he or the company may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States during the requisite statutory period. For these additional reasons, this document has minimal probative value.

The remaining evidence in the record is comprised of copies of medical insurance cards, W-2 forms, income tax returns, earnings records from the Social Security Administration, tax transcripts from the Internal Revenue Service, several receipts, the applicant's statements, and the instant Form I-687.

As evidence in support of his residence in the United States in 1983, the applicant has submitted a copy of a dental insurance card, a copy of a W-2 form, copies of federal and state income tax returns, copies of earnings records from the Social Security Administration, and copies of tax transcripts from the Internal Revenue Service. The copy of the applicant's federal income tax return is dated October 15, 1986, and lists as the applicant's address [redacted] in Arleta, California. The state income tax return lists as the applicant's address [redacted] apartment [redacted] in Sun Valley, California. In the instant application, the applicant lists the address of [redacted] in Arleta, California as his residence for the years 1981 to 1984. The applicant lists the address [redacted] in Sun Valley, California as his residence for the years 1984 through the remainder of the requisite statutory period, however he lists his apartment number as 39. Although these documents are some evidence in support of the applicant's residence in the United States in 1983, they are not sufficient evidence of continuous residence for the duration of the requisite period. In addition, due to these inconsistencies, these documents have minimal probative value.

As evidence in support of his residence in the United States in 1984, the applicant has submitted a copy of a medical insurance card, a copy of a W-2 form, copies of federal and state income tax returns, copies of earnings records from the Social Security Administration, and copies of tax transcripts from the Internal Revenue Service. The copy of the applicant's federal income tax return lists as the applicant's address [redacted] in Sun Valley, California. The state income tax return lists as the applicant's address [redacted] apartment [redacted] in Sun Valley, California. As stated above, the addresses on the income tax returns are inconsistent with the applicant's statement of his residence in the instant application. Although these documents are some evidence in support of the applicant's residence in the United States in 1984, they are not sufficient evidence of continuous residence for the duration of the requisite period. In addition, due to this inconsistency, these documents have minimal probative value.

As evidence in support of his residence in the United States in 1985, the applicant has submitted copies of federal and state income tax returns, copies of earnings records from the Social Security Administration, and copies of tax transcripts from the Internal Revenue Service. The copies of the applicant's federal and state income tax returns list as the applicant's address [redacted] apartment [redacted] in Sun Valley, California. Although these documents are some evidence in support

of the applicant's residence in the United States in 1985, they are not sufficient evidence of continuous residence for the duration of the requisite period. However, as stated above, the address on the income tax returns is inconsistent with the applicant's statement of his residence in the instant application. In addition, the Renter's Credit portion of the state income tax form states that the applicant is requesting an income tax credit for renting a property as of March 1, 1985 at [redacted] in Arleta, California. In the instant application, the applicant states that he only resided at that address until 1984. Finally, although the applicant reported earnings in 1985, he has not produced documentation identifying for whom he worked in 1985.[3] Due to these inconsistencies, these documents have minimal probative value.

As evidence in support of his residence in the United States in 1986, the applicant has submitted copies of two W-2 forms, federal and state income tax returns, earnings records from the Social Security Administration, tax transcripts from the Internal Revenue Service, and a receipt.[4] The copies of two W-2 forms list two separate addresses for the applicant, [redacted] in Arleta, California and [redacted] in Sun Valley, California. The copies of the applicant's federal and state income tax returns list as the applicant's address as [redacted] in Sun Valley, California. In addition, the applicant has submitted a copy of a receipt for payment regarding a property description of [redacted] Although these documents are some evidence in support of the applicant's residence in the United States in 1986, they are not sufficient evidence of continuous residence for the duration of the requisite period. However, as stated above, the addresses on the W-2 forms, income tax returns, and receipt, are inconsistent with the applicant's statement of his residence in the instant application. Due to these inconsistencies, these documents have minimal probative value.

As evidence in support of his residence in the United States in 1987, the applicant has submitted a copy of a receipt for a driver's license application fee, a copy of Form 1902-B Report of Income Tax Examination Changes for the 1984 federal income tax form, and a copy of a receipt.[5] The copy of the receipt for a driver's license application fee lists the address of [redacted] in Arleta, California. Although these documents are some evidence in support of the applicant's residence in the United States in 1987, they are not sufficient evidence of continuous residence for the duration of the requisite period. In addition, the address on the receipt for a driver's license application fee is inconsistent with the applicant's statement of his residence in the instant application. Due to this inconsistency, this document has minimal probative value.

As evidence in support of his residence in the United States in 1988, the applicant has submitted copies of earnings records from the Social Security Administration, copies of tax transcripts from the Internal Revenue Service, and copies of two receipts. Although these documents are some evidence in support of the applicant's residence in the United States in 1988, they are not sufficient evidence of continuous residence for the duration of the requisite period.

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[3] The employment verification letter from [redacted], Director of Human Resources of American Products Company, states that the applicant did not work for that company in 1985.

[4] One of the W-2 forms is marked as reissued.

[5] Neither the copies of earnings records from the Social Security Administration nor the copies of tax transcripts from the Internal Revenue Service list any earnings for the applicant in 1987.

The remaining evidence in the record is comprised of copies of the applicant's statements and the instant Form I-687. In the instant application, the applicant claims that he first came to the United States in January 1981 and that his only absence from the United States during the requisite period was for 30 days in August 1987. However, the applicant also submitted the birth certificate of his youngest child, born in Mexico on October 2, 1988 and stated that the child's mother first came to the United States in 1999. Therefore, the birth date of the applicant's youngest child is inconsistent with the applicant's statement that his only absence from the United States was for a period of thirty days in August 1987. The applicant's many contradictions are material to his claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra.* The evidence establishes that the applicant resided in the United States for some part of the requisite period. The contradictions of record, however, undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The statements and evidence currently in the record which are offered to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.