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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

PUBLIC COPY

FILE: [redacted] Office: LOS ANGELES Date: JUN 30 2009

MSC-05-260-13734

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. 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 noted the inconsistencies and contradictions found in the applicant's statements and testimony and in the evidence he submitted to support his application. 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.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) erred and abused its discretion by questioning the applicant's credibility and lack of proper documentation. Counsel further asserts that the applicant's amended declaration, plausible explanations and direct testimony, and affidavits that are corroborated by testimony is sufficient to establish his presence in the United States during the requisite period. The applicant does not submit any evidence on appeal.

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. *See* 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant stated on his previous Form I-687 dated February 19, 1990, at part 33 that he resided at [redacted] in Baldwin Park, California from 1981 to 1990. He stated on his previous Form I-687 dated March 24, 1999, at part 33 that he resided at [redacted] in Baldwin Park, California from November 1981 to January 1989. The applicant stated on his current Form I-687 at part 30 that he resided at [redacted] from September 1981 to December 1985; at [redacted] in Baldwin Park, California from January 1986 to January 1987; and at [redacted] in Baldwin Park, California from January 1987 to November 1990. Here, the applicant's statements are contradictory and inconsistent. Although the applicant claims that a notary prepared his 1990 application and supplement, he signed both documents "under penalty of perjury that the foregoing is true and correct." It is also noted that although it is claimed on appeal that the applicant lived with his brother [redacted] since entering the United States and that the applicant's addresses coincide with the information he provided on his current Form I-687 application, the record of proceeding contains [redacted] grant deed for the property known as [redacted] in Baldwin Park, California

which was signed and dated March 1, 1987. This is in direct contrast with the applicant's claimed residency. It is further noted that the applicant submitted a Form G-325A, Biographic Information dated May 28, 2002 in which he stated that he resided at [redacted] in Baldwin Park, California from September 1981 to November 1989.

The applicant stated under penalty of perjury on his Supplement Form for the Determination of Class Membership, signed on February 19, 1990, at number 6 that he entered the United States in November of 1981. When brought to the applicant's attention, he declared that the notary who prepared the form had mistakenly put November 1981 when in actuality, he entered the United States in September of 1981. However, during the applicant's interview in December of 2003 with immigration officers in relation to his Form I-485 Application to Register Permanent Residence or Adjust Status, he stated under oath that he entered the United States in November of 1981. In contrast, the applicant testified during his interview on February 1, 2006 that he entered the United States on September 16, 1981. This statement is inconsistent with the statement made by the applicant in his declaration at line 6 and 7 where he stated; "I, [redacted], a native of Mexico, arrived in the United States in November 1981."

The applicant stated on his previous Forms I-687 dated February 19, 1990 and March 24, 1999, at part #36 that he was self-employed at Packing Comp. from January 1981 to 1989. The applicant claimed in an amended declaration that the notary who prepared his previous Form I-687 incorrectly indicated that he was employed from January of 1981, but should have stated that his employment was from September 1981. Although the applicant claims that a notary mistakenly indicated on his previously Form I-687 dated February 1990 that he was employed since January 1981, he signed the document "under penalty of perjury that the foregoing is true and correct." It is noted that the applicant has not attempted to amend his previous Form I-687 dated March 1999 which also indicates that his employment with the Packing Comp. began in January 1981. It is further noted that the applicant stated on his Form G-325A, Biographic Information that he was employed by "multiple employers" from November 1981 to September 1989. The declarations made by the applicant are also inconsistent with the testimony of affiant Francisco Acuna who stated in his affidavit that he employed the applicant at his car wash from December 1981 to October 1988 (*see below*).

Here, the multiple contradictions and numerous inconsistencies cast doubt on the applicant's evidence and proof. 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. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant submitted the following evidence:

- **An affidavit dated May 14, 2002 and November 10, 2004 from** [redacted] who stated that he employed the applicant at his car wash business from December 1981 through to October 1988 and that the applicant worked 16 hours per week and was paid

in cash. The affiant also stated that based upon his personal relationship with the applicant, he knows that the applicant entered the United States in September of 1981. The statements are inconsistent with what the applicant stated on his Form G-325A dated May 28, 2002 and his previous Forms I-687 where he stated that he was employed since November 1981 and January 1981 respectively. In addition, the affidavits do not conform to regulatory standards for attestations by employers. Specifically, the statements are not on company stationary nor do the affidavits carry a company logo or seal. In addition, the affidavit does not specify the address(es) where the applicant resided throughout the claimed employment period, or of any periods of layoffs. 8 C.F.R. § 245a.2(d)(3)(i).

- Affidavits from [redacted] (applicant's brother), [redacted], and [redacted] who stated that the applicant entered the United States in September of 1981. They also stated that the applicant lived with his brother at [redacted] in Baldwin, California from September 1981 to December 1985; at [redacted] in Baldwin, California from January 1986 to January 1987; and at [redacted] in Baldwin, California from January 1987 to 1990. The statements are inconsistent with the applicant's brother's signed grant deed for the property known as [redacted] in Baldwin Park, California which was entered into on March 1, 1987. The affiants' statements are also inconsistent with sworn statements made by the applicant which have been previously discussed.

- An affidavit from who stated that he has known the applicant since September 1981.

- An affidavit from who stated that she has known the applicant since 1982 and that they usually keep in touch with each other.

  A declaration from [redacted] who stated that she has known the applicant since 1986 and that she is a close friend of the applicant's family.

- A declaration from [redacted] who stated that he has known the applicant since November of 1986 because he has been his neighbor since then.

- A declaration from [redacted] who stated that he has known the applicant since March 1987. He also stated that he has first-hand knowledge of the applicant's continuous residence in the United States since 1986 because the applicant was a gardener at his property in Baldwin Park, California.

These affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements 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 during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. It is noted that the credibility of the evidence submitted by the applicant is questionable. There are multiple inconsistencies and contradictions found in the record that have not been fully addressed.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 inconsistencies and contradictions found in the record, and the applicant's reliance on evidence with little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra*. The applicant has failed to overcome the director's grounds for denial. 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.