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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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[REDACTED]

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER
consolidated herein]

Date:

MAR 03 2010

MSC-05 050 10110
MSC-07 327 16492 – APPEAL

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.

Perry J. Rhew
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 originally denied by the by the director in Los Angeles, California. The decision was subsequently amended by the Director, National Benefits Center, Lee's Summit, Missouri. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since December 1981, 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 on November 19, 2004. The director in Los Angeles originally denied the application, finding that the applicant had not established that he is a class member in one of the legalization class action lawsuits. The applicant timely appealed the decision to the Special Master. That decision was amended by the director in Lee's Summit, Missouri, finding that the decision should not be a class membership denial and afforded the applicant the proper appellate right to the AAO.

On appeal the applicant asserts that he has been residing in the United States from 1981 through the requisite period, and that he meets the continuous residence requirement to adjust status under section 245A of the Act.

On January 15, 2010, the AAO issued a Notice of Intent to Deny (NOID) to the applicant notifying him of the deficiencies in the evidence he submitted and granted him 30 days to submit rebuttal or additional evidence in support of his application. The applicant responded and submitted copies of documents previously submitted into the record. The AAO will consider the record complete and will adjudicate the case based on the evidence in the record.

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 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.

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 AAO determines that the applicant has failed to meet his burden.

The record reflects that the applicant has submitted conflicting statements and documentation in support of his application. On a prior undated Form I-687 in the file and the accompanying Affidavit, the applicant indicated that he entered the United States in December 1981 and resided continuously in the country through the requisite period except for one brief trip to Mexico from September 5, to September 30, 1987. The applicant did not indicate any other trips outside the United States to Mexico during the 1980s. On the Form I-687 as well as on a Form I-485 (Application to Register Permanent Resident or Adjust Status) the applicant filed on September 20, 2001, the applicant indicated that he has two children who were born in Mexico during the 1980s. His daughter [REDACTED] was born on September 10, 1984 and his son [REDACTED] was born on April 22, 1986. On a Form G-325A completed by the applicant on September 7, 2001, which he filed with the Form I-485, the applicant indicated that he got married to [REDACTED] in Mexico on September 10, 1983. The applicant did not indicate and the record does not reflect when the applicant's wife came to the United States or that the applicant's wife resided with him in the United States during the 1980s. Therefore, the births of the applicant's children in Mexico in September 1984 and April 1986 as well as his marriage in Mexico in September 1983 strongly suggest that the applicant was in Mexico during those years. The claimed single absence from the United States in 1987 could not account for the applicant's presence in Mexico in 1983, 1984 and 1986. The contradiction noted above call into serious question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

The record includes other conflicting documents submitted by the applicant in support of his application. The record includes several retail and merchandise receipts purportedly issued to the applicant in 1988 as well as a registration form issued to the applicant in September 1983. These documents do not appear to be genuine. The receipts which were issued in March, April, September and October 1988, were addressed to the applicant at [REDACTED]. The applicant however, identified his address as [REDACTED], from January 1987 to June 1992. In fact, the record does not show that the applicant claimed the [REDACTED] address as one of his addresses in the United States during the requisite period. The registration form dated September 3, 1983 was addressed to the applicant at [REDACTED] however, the applicant indicated his address as [REDACTED], from December 1981 to January 1987.

The contradictions in the applicant's prior statements and supporting documents cast considerable doubt on the veracity of his claim that he has continuously resided in the United States from before January 1, 1982 through the requisite period. 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 without competent objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. See *id.*

As discussed above, the applicant has provided conflicting statements and documentation in support of his application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – affidavits from individuals who claim to have rented an apartment to, worked with, resided with or otherwise known the applicant in the United States during the 1980s – is suspect and not credible.

The affidavits in the record have minimalist or fill-in-the-blank formats, with very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants do not seem to have direct personal knowledge of the events and circumstances of the applicant's residence in the United States. The affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States over the years. Although some of the affiants provided documents to establish their identities, none provided any documents to establish their residence in the United States during the requisite period.

██████████ in his affidavit of July 13, 1993, claims that he knew the applicant resided in Los Angeles, California, since 1981 because he and the applicant worked at the same restaurant "██████████" located at the corner of ██████████ and ██████████ in Los Angeles, California, from September 1981 to September 1983. This affidavit is in direct conflict with the employment information provided by the applicant. The applicant indicated that he was employed by ██████████ as a housekeeper from December 1981 to September 1987. The applicant did not claim ██████████ as any of his employers in the United States during the requisite period.

██████████ claims that he was the manager of the apartment complex located at ██████████ and that he knew the applicant has been residing in Los ██████████ since January 22, 1981 because he rented an apartment to the applicant at the ██████████ apartment complex from January 22, 1981 to January 1, 1987. The affidavit by ██████████ does not appear to be genuine because the applicant did not claim to have entered the United States until December 1981; therefore, it is impossible for ██████████ to have rented an apartment to the applicant almost one year before the applicant entered the United States. Neither ██████████ nor the applicant submitted any documents such as rental receipts, utility bills, or other documentation addressed to the applicant at the said address to show that the applicant resided at the address during the period indicated. Most importantly, ██████████ did not submit any documentation to establish that he was residing in the United States during the 1980s and did not submit any documentation to establish that he was the manager of the apartment complex.

In view of the substantive deficiencies and apparent contradictions discussed above, the AAO finds that the credibility of the affidavits is questionable. They have little probative value and cannot serve as persuasive evidence to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the

requisite period. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO concludes that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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.

The AAO notes that the applicant was arrested by the Los Angeles Police Department on August 14, 1994, and charged with one count of Inflicting Corporal Injury (Spouse/Cohabitant). The actual court records are not currently contained in the record and the applicant's criminal history will not be used as a basis for dismissing his appeal.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.