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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

MSC 06-030-10454

Office: HOUSTON

Date:

DEC 17 2008

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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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, Houston, and is now before the Administrative Appeals Office 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 denied the application after determining 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 that the applicant's Form I-485 Application to Register Permanent Residence of Adjustment Status under the Legal Immigration Family Equity Act (LIFE Act) had been denied on February 9, 2004, and that the denial was upheld by the AAO on appeal. It is further noted that the director indicated in that decision that the applicant had failed to submit evidence sufficient to overcome the reasons stated in the Form I-485 Notice of Intent to Deny dated October 21, 2003. In that NOID, the director noted that although the applicant stated under oath during his immigration interview on March 6, 2003 that he was absent from the United States only once in 1987 for twenty-five (25) days to visit his father; the applicant had indicated on his Form I-485 application that he had a daughter born May 6, 1984 in Colombia, and that the applicant verified that information in his statement made during his immigration interview. The director further noted that the record of proceeding contained a copy of the applicant's daughter's Colombian birth certificate that showed she was born in Colombia on May 6, 1984, and that the birth certificate bears the applicant's signature as the father. The director noted that in order to sign the birth certificate, the applicant had to be physically present in Colombia at that time. The director also noted that the applicant submitted a letter of employment signed by [REDACTED] and dated December 16, 1990, in which he stated that the applicant was employed as a helper for MM Prosecon Corporation from December 1981 through January 1984, but that the applicant admitted under oath during his immigration interview and on a sworn statement that was signed by him that he worked cleaning houses and yards when he first entered the United States. The director therefore concluded that the information and documentation submitted by the applicant was insufficient to overcome the grounds for denial as described in the Notice of Intent to Deny (NOID) and the Notice of Decision.

On appeal, counsel asserts that the applicant has submitted all evidence that was readily available and that the passage of time should be taken into consideration in reviewing the evidence and testimony presented. Counsel also asserts that the applicant's testimony and the affidavits submitted on his behalf are credible and verifiable.

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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on October 30, 2005.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1982, the applicant provided the following attestations:

- A declaration dated January 17, 1990 from the store manager of Texas Furniture in which she stated that the store records show that the applicant bought furniture on lay away in March of 1982. She has failed to provide copies of store records, and therefore, only minimal weight will be given to this letter.

A declaration dated December 16, 1990 from [REDACTED] of Prosecon Corp. in which he stated that he employed the applicant from December 1981 to January 1984 as a maintenance helper.

- A declaration dated December 5, 1990 from [REDACTED] in which he stated that he employed the applicant from March 1984 to December 1986 as a messenger.

statement is inconsistent with statements made by the applicant during his interview with the immigration officer on March 6, 2003, at which time the applicant stated under oath that he entered the United States in the summer of 1981 and that he worked cleaning houses and yards and was paid in cash. There has been no explanation given for the inconsistencies. 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, 591-92 (BIA 1988). In addition, the letters of employment do not conform to regulatory standards for attestations by employers. Specifically, the letters do not specify the address(es) where the applicant resided

throughout the claimed employment period. 8 C.F.R. § 245a.2(d)(3)(i). The declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Because the declarations do not conform to regulatory standards, they can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following evidence:

- Pay stubs dated December of 1981 and July and December of 1982 with no employee name;
- Pay stubs from Country Place Partners bearing the applicant's name with incomplete dates;
- Pay stubs from Star Bright Janitorial dated 1988 with no employee name;
- A receipt from J. C. Electric Motor Repairs, Inc. with illegible dates and no customer name;
- Warner Cable utility bills 1986 and 1987; and,
- Rent receipts from Northwest Corners Apartments bearing the applicant's name as tenant with illegible dates.

These documents are either non-identifiable, in that they do not contain the applicant's name or address, or they are not specifically dated. Because the documents are lacking in detail, they can be given no probative value with respect to the applicant's claimed presence in the United States during the requisite period.

In response to the NOID, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which she stated that she has known the applicant since the latter part of 1982 when she met him at a family reunion, and that they have maintained a friendly relationship since then. She also stated that the applicant would confide in her from time to time concerning the difficulties he was having with his employment and his adjustment to life in the United States.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since the latter part of 1981 and that at that time they would attend soccer games at Bear Creek Park. He also stated that the applicant would introduce him to Colombian girls and that they would eat Mexican food in the north side of Houston, Texas.

While these attestations may be some evidence of the applicant's presence in the United States, they are insufficient to establish his claimed continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period. The affiants have failed to specify the applicant's place of residence, or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to provide the preponderance of evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status, and he resubmits evidence already contained in the record of proceeding.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The attestations submitted in response to the NOID, while providing some evidence of the applicant's presence in the United States, are insufficient to establish his continuous unlawful residence in the country throughout the requisite period. The letters of employment are inconsistent with statements made by the applicant during his immigration interview, and fail to conform to regulatory standards. The other evidence submitted by the applicant is either unidentifiable to the applicant or is not specifically dated. It is noted by the AAO that although the applicant claims to have been residing in the United States during the requisite period, the record of proceeding shows that three of his children were born in Colombia on May 6, 1984, April 23, 1986, and August 8, 1988 respectively. The applicant stated under oath during his immigration interview on October 4, 2006 that he briefly visited Colombia in 1984 and that his wife traveled from the United States to Colombia to give birth to all three children however, he has failed to provide independent documentary evidence to substantiate his claim. It is also noted by the AAO that the applicant has failed to address the discrepancies found in the record with regard to his employment during the requisite period.

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 applicant's inconsistent statements regarding his employment and unexplained absences from the United States, and his reliance upon declarations 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 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.