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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-235-15263

Office: LOS ANGELES

Date: NOV 21 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.

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 Field Office, 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 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 period and that the record contain several notable inconsistencies that diminish the credibility of the applicant's eligibility.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, and that, in denying his application, Citizenship and Immigration Services (CIS) inappropriately weighed the applicant's oral testimony and "took the erroneous position of disregarding all other evidence submitted."

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 245(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)(1).

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). To meet his or her burden of proof, 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. 8 C.F.R. § 245a.2(d)(6).

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.

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 purported Social Security Statements, a 1981 California driver's license, an undated hospital insurance card, affidavits of employment and tax documents from 1987 and 1988.

The AAO has reviewed the evidence, and evaluated the application not by the quantity of evidence alone but by its quality. As stated previously, 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.

Specifically, the applicant submitted the following:

- A copy of his Form I-700 application, and Form I-705 affidavit.
- A Revised Social Security Administration (SSA) Personal Earnings and Benefit Estimate Statement dated January 26, 2006 showing earnings for the years 1981, 1982 and 1986 through 1990. The document is in Spanish. This document is offered by the applicant as evidence of his residency in 1981 and 1982. However, the document indicates that the source of earnings in 1981 and 1982 was Alumax Aluminum Corporation in Magnolia,

Arkansas. The applicant did not indicate this employer on his I-687 application, nor did he ever indicate that he lived in Arkansas. Thus, this document lacks credibility and will not be accorded any evidentiary weight.

- Social Security cards in the name [REDACTED] using the number [REDACTED]. The applicant does not indicate that he ever used this social security number. Additionally, the cards are not dated and therefore cannot be given evidentiary weight. It is also noted that on December 12, 2005 the applicant filed a Statement of Claimant or Other Person request with the SSA requesting that his earnings under the social security number [REDACTED] be consolidated into the social security number [REDACTED]. He did not request the number indicated on these cards be consolidated and therefore, their veracity and credibility is further diminished.
- A California driver's license issued to the applicant on January 22, 1981. This document provides some evidence of the applicant's entry to the United States prior to January 1, 1982, however, it does not support his claims of continuous residency during the entire requisite period.
- An undated hospital identification card for Howmet Corporation issued to [REDACTED]. As the card is not dated, it will be given no evidentiary weight.
- An employment verification letter from D&G enterprises dated May 5, 1988 and signed by [REDACTED]. In this letter, [REDACTED] indicates that the applicant is currently employed with the company and has been since August 20, 1987. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A second employment verification letter from Compton Sizzler Restaurant dated April 26, 1988. The signature is illegible. The declarant indicates that the applicant worked as a dishwasher from April 1986 until August 1987. This letter also fails to meet the requirements of 8 C.F.R. § 245a.2(d)(3)(i) which are described above.
- A letter from [REDACTED] who indicates that the applicant worked for [REDACTED] Farm Labor Contractor from November 1985 until March 1986. This letter does

include some of the requirements of the regulation cited above. However, the Social Security statement offered by the applicant on appeal does not contain this employer for the period of time indicated. In fact, that document does not list any wages earned by the applicant in 1985. 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. In this case, the discrepancies between the applicant's employment history provided in affidavits and on his Form I-687 and the employment history contained in the Social Security Statement have not been resolved or even addressed by the applicant.

W-2s for the years 1987 and 1988. There is no indication that the tax returns were ever filed, therefore they lack probative value.

In addition to the inconsistencies noted above, the director noted that the applicant filed an I-700 application on April 27, 1988 in which he indicated that he first resided in the United States in November 1985. On appeal, the applicant explains this inconsistency by noting that "the applicant was pressured into signing a statement that did not reflect accurate facts." He offers the Social Security statement noted above as evidence of his residency prior to 1985. As noted above, this document does not appear credible and will not be given evidentiary weight.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 reliance upon affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.