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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-101-22692

Office: LOS ANGELES

Date: SEP 25 2008

IN RE:

Applicant:

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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 District 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 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, the applicant asserts that in arriving at its decision to deny the application, the Service, “[I]gnored substantial evidence on record and misinterpreted the testimony given at the interview, failing to accord it due weight and consideration.”

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)(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).

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 Citizenship and Immigration Services (CIS) on January 5, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his first address in the United States to be [REDACTED] from 1981 to 1986. Similarly, at part #33, he indicated his first employment in the United States was as a gardener in “different locations,” from 1981 until 1986. The applicant also indicated that from 1986 until 1992 he worked at “various job sites” as a construction worker.

In support of his application, the applicant submitted seven declarations:

- A declaration from [REDACTED] who states that he was living in El Monte, California when the applicant, his friend, arrived in the United States in 1981. Mr. de la Pena states that he met the applicant in 1980 while looking for work and that “he has done work to my house many times.” The declarant does provide an address where he lived

during the relevant period; however, he fails to provide an address where the applicant lived. He also fails to state how he dates his initial acquaintance with the applicant or provide any additional details of the applicant's residency that support his claim of continuous residence. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1980 and resided continuously in the United States for the duration of the requisite period.

- A declaration from [REDACTED], the applicant's brother-in-law. The declarant states that he was living in El Monte, California when the applicant arrived in the United States. [REDACTED] states that he met the applicant at a family gathering in 1981 and since then they have "kept in touch." He further states that the applicant entered the United States illegally through San Ysidro, but he does not indicate how he knows this. Like the above declarant, [REDACTED] does not indicate an address where the applicant resided in the United States, or how frequently he had contact with him.
- A declaration from [REDACTED] who states that he was living in Los Angeles, California when the applicant arrived in the United States. [REDACTED] states that he met the applicant through friends at a party in 1981 and since then they have "kept in touch and that the applicant has done, "some work on my house and attended many of the same gatherings." Like the above declarants, [REDACTED] does not indicate an address where the applicant resided in the United States, or how frequently he had contact with him.
- A declaration from [REDACTED] who states that she was living in El Monte, California when the applicant arrived in the United States. She indicates that she met the applicant in 1981 when he painted her home. She further states that the applicant entered the United States illegally through San Ysidro, but she does not indicate how she knows this. Like the above declarants, [REDACTED] does not indicate an address where the applicant resided in the United States, or how frequently she had contact with him.
- A declaration from [REDACTED] who states that she met the applicant in 1981 at the restaurant where she worked. She further states that the applicant entered the United States illegally through Tijuana, but she does not indicate how she knows this. Like the above declarants, [REDACTED] does not indicate an address where the applicant resided in the United States, or how frequently she had contact with him.
- A declaration from [REDACTED] who states that she met the applicant in 1981 through her boyfriend at a party. She further states that the applicant entered the United States illegally through San Ysidro, but she does not indicate how she knows this. Also, the record reveals that at his interview with Citizenship and Immigration Service (CIS) officers, on November 6, 2006, the applicant indicated that he met [REDACTED] in 1984. Like the above declarants, [REDACTED] does not indicate an address where the applicant resided in the United

States, or how frequently she had contact with him. Given the inconsistencies noted, this declaration will be given no weight.

- Finally, a declaration from ([REDACTED]) who indicates that she met the applicant at the local park, El Parrque La Raza in Lincoln Heights, California in 1980. She indicates that the applicant was her nephew's coach and that he has remained a close family friend. Like the above declarants, [REDACTED] does not indicate an address where the applicant resided in the United States, or how frequently she had contact with him.

The director denied the application for temporary residence on February 2, 2007. In denying the application, the director found that the evidence submitted was insufficient to establish eligibility for the benefit sought. Specifically, the director found that the declarations lacked specificity and detail. The director also noted that several of the declarants indicated that they met the applicant while he was working as a painter; however, the applicant indicated at his CIS interview that he did not begin painting until 1996.

On appeal, the applicant asserts that he did arrive in the United States in 1981, and explains that he did "not turn away work" taking various painting jobs part-time through the years. He fails to address the inconsistency noted with respect to [REDACTED] testimony and he offers no additional evidence of either his initial entry or continuous residency in the United States.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on declarations which are considerably lacking in certain basic and necessary information. As discussed above, the declarants' statements are significantly lacking in detail and do not establish that the declarants' actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the declarations provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to the requisite period, and he has submitted inconsistent testimony and evidence pertaining to his employment as a painter in the United States during the requisite period.

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).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and

contradictions noted in the record, seriously detract from the credibility of his 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 in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.