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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 03 2009
MSC 05 239 15454

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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In so finding the director noted that at his interview, the applicant provided dates when he had been absent from the United States and residence addresses that did not agree with the absence dates and addresses that did not coincide with those disclosed on his Forms I-687. The director also noted that the affidavits stating he lived and worked in the United States contradicted each other because they provided different locations.

On appeal, counsel states the applicant has reasonable explanations for the varying information that he has provided and submits a written statement from him along with a brief in support of his application. Counsel argues that the director did not properly discuss all of the evidence submitted and did not articulate or explain why specifically the evidence by itself and when viewed in its totality failed to meet the preponderance of the evidence standard and thereby erred as a matter of law and abused her discretion. Counsel outlines evidence not mentioned by the director and submits five additional notarized statements and a declaration from the applicant dated April 27, 2007.

In his April 27, 2007 declaration, the applicant acknowledges that the Form I-687 that he filed in 1990 contained different address information than the current Form I-687. He explains that the "Notario" who filled out his first Form I-687 in 1990 did not properly explain or review the information on the application with him. He further asserts that he explained his prior confusion to the officer at his interview in October 2006 regarding the addresses and absences he had put on his first I-687 and second I-687 and ended up correcting them.

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) 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

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 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.

On appeal, counsel argues that the director did not properly discuss all of the evidence submitted and did not articulate or explain why specifically the evidence by itself and when viewed in its totality failed to meet the preponderance of the evidence standard and thereby erred as a matter of law and abused her discretion. None of the residence evidence provided by the applicant is plausible because he provided conflicting lists of his residences in the United States since his first entry on his Form I-687 signed by him on August 30, 1990 and the current Form I-687. On appeal, the applicant explains that the "Notario" who filled out his first Form I-687 in 1990 did not properly explain or review the information on the application with him. However, he has submitted no evidence to support his assertion. A good example of the credibility issue faced by the applicant in this case is that on his first Form I-687 he stated that he resided at [redacted] in Pasadena, California, from June 1980 to May 1984. However, on his current Form I-687, he stated that he resided at [redacted] in Los Angeles, California, from 1980 to 1984. None of the evidence submitted by the applicant can verify that he resided at both of the two divergent addresses during the same period of time. The evidence cited as being discrepant by the director was filed by the applicant with his applications. No evidence has been submitted on appeal to overcome the findings of the director.

In his April 27, 2007 declaration submitted on appeal, the applicant states:

> In April 1980, I went to Tijuana, Mexico to visit my wife for about two weeks and she got pregnant with our daughter [redacted] born January 6, 1981 in Mexico. In April 1981, I went to visit my wife in Tijuana, Mexico for about 2 weeks and she got pregnant with our son [redacted] born January 7, 1982 in Mexico. In November 1981, I went to Jalisco, Mexico for about 2 weeks because my daughter was sick and also to go to the doctor. In May 1986, I went to Jalisco, Mexico for about 2 weeks because my son was sick. In November 1986, I went to Jalisco, Mexico for about 2 weeks to obtain medical treatment. In January 1993, I went to Vera Cruz, Mexico for about 30 days to visit my sister who was sick.

However, on his current Form I-687, the applicant stated that his only absence from the United States since entry was when he went to see a doctor in Mexico in 1986.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant asserted residential histories on his Forms I-687 is accompanied by inconsistent evidence. His absences from the United States during the requisite period vary from and his declaration submitted on appeal and the absence listed on his current Form I-687

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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