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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-208-10842

Office: LOS ANGELES

Date:

APR 08 2009

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. 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, 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 the contradictions in statements made by affiant [REDACTED] and the applicant during his immigration interview concerning the applicant's residence in the United States. 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 he resided at the same address but not the same apartment as [REDACTED] and that his poor English and translation skills led to a misunderstanding regarding his residency in the United States. He submits as evidence an affidavit from [REDACTED]

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. 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).

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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

On the applicant's Form I-687 application at part #30 he stated that he resided at [REDACTED] in Los Angeles, California from 1981 to 1984; and at [REDACTED] in Los Angeles, California from 1984 to 1991.

The applicant submitted the following attestations as evidence:

- An undated affidavit from [REDACTED] in which he listed the applicant's addresses as [REDACTED] in Los Angeles, California from 1981 to 1984; and [REDACTED] from 1984 to 1991. He stated that he met the applicant through their sharing the same apartment at both addresses. An affidavit from [REDACTED] dated March 9, 2007 in which he stated that he has known the applicant

since childhood in Mexico and that in 1981 he and the applicant became roommates at [REDACTED] in Los Angeles, California. He also stated that to his knowledge, the applicant resided at [REDACTED] in Los Angeles, California from 1984 to 1991. Here, the affiant's statements are contradictory in that he initially stated that he and the applicant were roommates from 1981 to 1991, and in his March 2007 affidavit he stated that they were only roommates from 1981 to 1984.

- An undated affidavit and an affidavit dated March 9, 2007 from [REDACTED] in which she stated that she met the applicant at a party in 1983, and that since that day they became good friends. She also listed the applicant's address as [REDACTED] in Los Angeles, California from 1983 to 1985.

The statements are inconsistent with the applicant's Form I-687 application at part #30 where he stated under penalty of perjury that he resided at [REDACTED] in Los Angeles, California, not [REDACTED], from 1981 to 1984; and at [REDACTED] in Los Angeles, California, not [REDACTED], from 1984 to 1991. It is also noted that affiant [REDACTED] stated that the applicant resided at [REDACTED] from 1983 to 1985 but that the applicant indicated on his Form I-687 application that he resided at that address until 1991. The inconsistencies contained in the affiants' statements cast doubt on the applicant's proof. 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. 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 (BIA 1988).

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and claims that his poor English language and translation skills led to a misunderstanding regarding his residency in the United States. The applicant submitted on appeal the following affidavit:

- An affidavit from [REDACTED] in which he states that he has known the applicant since 1984 and that he was the apartment manager of the building known as [REDACTED] in Los Angeles, California at that time. He further states that the applicant was one of the tenants that resided at the above noted address in apartment [REDACTED], and that [REDACTED] lived in apartment [REDACTED]. This statement is inconsistent with the applicant's Form I-687 application at part #30 where he stated under penalty of perjury that he resided in apartment [REDACTED] at the above noted address. It is also noted that [REDACTED] stated that he resided in apartment # [REDACTED] with the applicant, not apartment [REDACTED] as stated by the affiant. It is further noted that the affiant fails to specify the dates of the applicant's tenancy.

In the instant case, the applicant has failed to establish his continuous residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the basis for the director's denial. The affidavits submitted are contradictory and inconsistent with statements made by the applicant on his Form I-687 application. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the affidavits submitted.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 inconsistencies and contradictions found in the record, it is concluded that the applicant has failed to establish his 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.