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

U.S. Citizenship and Immigration Services

PUBLIC COPY

Identifying data deleted to prevent unwarranted invasion of personal privacy

L 1

APR 30 2009

FILE: [redacted] Office: LOS ANGELES Date:

MSC-05-363-13460

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: 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 that the applicant did not have any residence or employment listed on his Form I-687 application for the periods 1981 through 1986. The director also noted that at part #32 of his Form I-687 application where it asks the applicant to list all absences from the United States, the applicant stated that his residence was in Mexico from January 1969 to 1986. The director noted that in response to the Request for Evidence (RFE), the applicant submitted Form W-2's that listed different employers than what the applicant had stated on his application and that his Social Security Administration Earnings Statement showed that the applicant started paying taxes in 1989. The director further noted that the applicant submitted a copy of a lease agreement that didn't show when it was signed or who lived with the tenant [redacted] whose signature appeared on the document. 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 his claim of eligibility for temporary resident status. He also asserts that he was brought to the United States in June 1981 and started school in September of 1981, and attended school until June of 1983. The applicant further asserted that he thereafter went to work in the fields as a farm laborer for different employers in the Coachella Valley, Imperial, and Bakersfield areas. He submits evidence on appeal.

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.

The applicant submitted the following evidence:

- The applicant's Social Security Administration earnings statement that listed his earnings for the years 1989 through 2005.
- A copy of a lease agreement signed by as tenant for the premises known as in Thermal, California.
- Copies of Form W-2 for the 1984, 1985, and 1986 tax years that list the applicant as employee and as employer. The applicant's social security number is listed as
- Copies of Form W-2 for the 1987 and 1988 tax years that list the applicant as employee and . as the employer. The applicant's social security number is listed as

  A copy of a California School Immunization Record dated September 4, 1981 which indicates that the applicant received immunizations in 1969 and 1970.
- A letter dated November 21, 2005 and signed by Director of Child Welfare and Attendance of the Coachella Valley Unified School District in which it is stated that according to the files and historical records, the applicant attended in Thermal, California from September 8, 1981 to June 10, 1983, and that he completed the 7th and 8th grades.
- Copies of Form SSA-7008, Request for Correction of Earnings Record, dated November 20, 2006 in which the applicant listed earnings as an agricultural worker for for 1984, 1985, and 1986; and as an agricultural worker for . for 1987 and 1988.

There is no evidence in the record of proceeding to demonstrate that the Form SSA-7008s were ever received by the Social Security Administration. Although the applicant claims to have been employed by from 1984 to 1986 and for from 1987 to 1988, he did not list on his Form I-687 application any employment history before 1986. The applicant's Social Security Administration statement of earnings does not list any earnings for the applicant until 1989. It is noted that the applicant listed on his Form I-687 application as his employer from 1986 to 1987 and as his employer from 1987 to 1995. The applicant's social security number is listed as on his Form W-2s and on his Request for Correction of Earnings Record dated November 2006 he lists his social security number as . The applicant has failed to provide an explanation for this inconsistency. The applicant's address on his Form W-2s for 1984 through 1988 is listed as in Indio, California; however, on his Form I-687 application he listed his address as in Calexico, California from 1986 to 1995. The immunization record and school letter are not certified and are not supported by other documentary evidence. These unresolved inconsistencies and contradictions 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 demonstrate his continuous residence in the United States throughout the requisite period.

On appeal, the applicant reasserts his claim of eligibility for the immigration benefit sought. The applicant resubmits a copy of the lease agreement and an amended copy of the letter dated November 21, 2005 from of Coachella Valley Unified School District. In the amended letter it is stated that the applicant resided with his parents at in Thermal, California during his enrollment at the school.

Here, the photocopied school letter submitted on appeal appears to have been altered to include the applicant's residence only after the director noted the discrepancies contained in the record. The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the school letter. It is noted by the AAO that the lease agreement which lists the applicant's address as in Thermal, California is inconsistent with the applicant's Form I-687 application where his first residence in the United States is listed as in Calexico, California from 1986 to 1995. It is also noted that although the applicant's mother's name appears on the lease agreement as a tenant, she did not sign the document acknowledging such. It is further noted that the applicant has failed to provide evidence to establish the date the lease agreement was signed. This evidence is contradictory to the applicant's Form I-687 application where he did not enter any address prior to 1986 and failed to list any information pertaining to his alleged school attendance. It is noted that the applicant fails to address the inconsistency in his statement pertaining to his residence in Mexico from 1969 to 1986 as listed at part #32 of his Form I-687 application. The discrepancies 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. *Matter of Ho*, *supra*.

Given the unresolved inconsistencies and contradictions found in the record, the applicant has failed to establish his continuous residence in the United States since prior to January 1, 1982. He has failed to overcome the basis for the director's denial.[1]

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 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.

---

[1] The applicant submitted a second Form I-687 application filed under and receipt number MSC-05-306-12611 which was denied on February 16, 2006, and not appealed.

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