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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 0 2 2009
MSC 05 299 11944

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

for Perry Rhew
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, California, and 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 the information provided at the time of his interview is correct. The applicant indicates that he was under stress and intimidation by the interviewing officer, "which led me to incorrectly answered [sic] his questions." The applicant asserts that the interviewing officer stated the person who assisted with his application "was known to had committed fraud or known for fraudulent applications and suggested that I testify that my entry was in the year 1983."

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- Two earnings statements dated in August 1986 from Transparent Products Corporation in Los Angeles, California.
- A hospital bill dated September 30, 1986 from Martin Luther King, Jr. General Hospital in Los Angeles, California.
- A letter dated August 3, 1993, from a representative of Huntington Park Community Adult School, who attested to the applicant's enrollment from December 1986 through March 1987.

- An affidavit from _____ who indicated that the applicant was in his employ as a gardener from January 1986 to November 1988.
- An affidavit notarized July 1, 1995, from an aunt, who indicated that the applicant has been residing at since March 1986.
- An affidavit from who indicated that the applicant resided at from December 1981 to March 1986.
- Affidavits notarized July 1, 1995, from and who attested to the applicant's residences in Los Angeles from December 1981 to March 1986 and in Compton since 1986. indicated that he and the applicant like the same sports and the applicant is a nice person. indicated that he has known the applicant for a long time and that the applicant is a good person.
- Affidavits from and who indicated that they met the applicant in 1981 outside of the Los Angeles Coliseum selling soccer T-shirts. indicated that he assisted in many soccer events and always saw the applicant and his mother doing business at the parking lots and at other places. indicated that the applicant informed him that his father worked in Mexico and he worked to help his mother and brothers who were residing in the United States. The affiants indicated that they have remained friends with the applicant since that time.
- A statement dated November 7, 2006 from who indicated that he met the applicant with his mother in November 1981 at the Los Angeles Coliseum selling soccer T-shirts. The affiant indicated that she employed the applicant as a gardener for five years until 1996.
- A California identification document which expired in 1992.

At the time of his initial interview on March 14, 1996, the applicant, under oath, signed a statement indicating that he first came to the United States in 1983.

At the time of his second interview on November 8, 2006, the applicant, under oath, signed a statement indicating he first came to the United States in June 1981 at the age of eleven. The applicant also indicated that he did not have school or immunization records because he was "already working at that time."

The director, in denying the application on March 29, 2007, noted the applicant's 1996 sworn statement and determined that the applicant had failed to establish continuous residence in the United States since prior to January 1, 1982.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status during the requisite period.

The affidavits from and indicate that they met the applicant in 1981 while he was working with his mother at the Los Angeles Coliseum. However, the applicant did not provide any evidence from his mother to support the affiants' statements.

The affidavit from the applicant's aunt raises questions to its authenticity as she attested to the applicant's residence at since March 1986. The hospital bill and identification document, however, listed a different address for the applicant.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The employment affidavit from failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant 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.

Finally, the record reflects that on July 19, 1995, the applicant was arrested by the Drug and Enforcement Agency in Los Angeles, California for possession with intent to distribute marijuana, a violation of section 11359 H&S. On February 5, 1996, the offense was dismissed.

The record also reflects that on April 21, 1996, the applicant was arrested for driving under the influence, a violation of section 23152(a) VC, and driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC, both misdemeanors. On June 20, 1996, the applicant was convicted of violating section 23152(b) VC. The remaining offense was dismissed. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c)(1).

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