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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 04 314 11019

Office: LOS ANGELES

Date: FEB 03 2009

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 (AAO) on appeal. The appeal will be dismissed.

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 the Form I-130, Petition for Alien Relative, filed in his behalf indicated that he entered the United States without inspection in 1992. The director also noted that the applicant also testified at his interview that he had departed and remained in his native country for three months in 1986, thereby breaking the continuity of his continuous residence and physical presence in this country during the requisite period.

On appeal, the applicant states that he was confused at his interview and provided dates without taking time to think of what he was being asked. The applicant resubmits fifteen "affidavit of witness" forms and three additional notarized statements for 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 Immigration and Nationality Act (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). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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.

The pertinent evidence in the record is described below.

1. Fifteen nearly identical notarized “Affidavit of Witness” statements dated from June 1, 2004 to July 19, 2004, from persons who state they are acquainted with or related to the applicant and have known him since July 1981.
2. A notarized statement from [REDACTED] dated May 13, 2005, indicating the applicant provided gardening service for him at his house at [REDACTED] in Montebello, California, every two weeks from 1981 through 1985.
3. A notarized statement from [REDACTED] dated May 25, 2005, indicating that he and the applicant had shared an apartment at [REDACTED] Bell Gardens, California, from June 1983 until December 1985.
4. A notarized statement from [REDACTED] dated June 8, 2005, indicating that from December 1982 through March 1983, he and the applicant were neighbors in Watsonville, California.
5. A copy of an envelope for a letter that the applicant sent from Watsonville, California, to a person in Mexico on March 22, 1983.
6. A copy of the applicant’s California driver’s license issued on April 7, 1984.
7. A notarized statement from [REDACTED] dated June 1, 2004, indicating that the applicant worked for him when he was operating the Esmeralda Popsicle factory in Bell Gardens, California from 1985 through 1988. He states that he is not currently operating the Popsicle Factory; however, he intends to call the applicant if the factory is reopened.
8. Copies of the applicant’s Bank of America money order receipts dated July 5, 1984, and August 13, 1985.

9. Copies of the applicant's California Department of Motor Vehicle receipts dated November 16, 1984.
10. A copy of the applicant's Travelers Express money order receipt dated July 13, 1985.
11. Copies of U.S. Postal Service Form 3806, Receipt for Registered Mail, showing he sent mail to persons in Mexico on July 9 and July 12, 1985.

The fifteen nearly identical notarized "Affidavit of Witness" statements (Item # 1 above), do not supply enough details to lend credibility to an over 23-year relationship with the applicant.

The employment verification letter in the form of a notarized statement (Item # 2), from [REDACTED] does not provide the applicant's address at the time of employment as required by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). It is noted that on his Form I-687, the applicant stated that he lived at [REDACTED] in Watsonville, California, from December 1982 to March 1983 which is 333 miles distant from the [REDACTED] address where the writer said that applicant worked every two weeks.

The notarized statement (Item # 3), from [REDACTED] that he and the applicant shared an apartment in Bell Gardens, California, from June 1983 until December 1985 is inconsistent with the applicant's statement on his Form I-687 that he lived at that address only until August 1985.

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's asserted employment and residential histories on his Form I-687, are accompanied by inconsistent evidence. 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 the Form I-130, Petition for Alien Relative, filed in his behalf indicated that he entered the United States without inspection in 1992. However, the copy of an envelope for a letter that the applicant sent from Watsonville California, to a person in Mexico on March 22, 1983 (Item #5), and the copy of his California driver's license issued on April 7, 1984 (Item # 6), establish that he was in the United States as early as 1983 and 1984. The AAO accepts that the applicant was present in the United States for a part of the requisite period.

The applicant shall be regarded as having resided continuously in the United States if at the time

the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

Without specifying the dates involved, the director also noted that the applicant also testified at his interview that he had departed and remained in his native country for three months in 1986, thereby breaking the continuity of his continuous residence and physical presence in this country during the requisite period. The applicant does not address the director's finding beyond stating that he was confused at his interview and provided dates without taking time to think of what he was being asked. It is determined that the applicant has not established continuous residence and physical presence due to his three month absence in 1986.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. After review of the 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.