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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: FEB 2 6 2009
MSC 06 098 17276

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. The decision is now before the Administrative Appeals Office 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 in response to a Form I-72, Request for Evidence, the applicant submitted affidavits, but he did not submit requested documentation for the years 1981 to 1988 from the Social Security Administration or for the years 1982 to 1988 from the Internal Revenue Service. The director further noted that the applicant's Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, did not list employment or residence information for the years 1981 to 1988.

On appeal, the applicant states that he worked during 1981 doing odd jobs and was paid cash. He further states that he found a job with and submits a letter to verify this information.

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). 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. A notarized statement dated December 10, 2006, from his friend who indicates that the applicant has been in the United States since 1981.

2. A notarized statement dated December 12, 2006, from a family friend named who indicates that the applicant has been in the United States since 1981.

3. A notarized statement dated December 13, 2006, from a family friend named who indicates that the applicant has been in the United States since 1981.

4. A notarized statement dated December 15, 2006, from a family friend named who indicates that the applicant has been in the United States since 1981.

5. A notarized statement dated December 15, 2006, from a family friend named who indicates that the applicant has been in the United States since 1981.

6. A notarized statement dated November 30, 2006, from , Owner of in Saugus, California, who states the applicant was employed by the nursery beginning in January 1982 thru 1988. states that he has been referring landscaping and gardening clients to the applicant since 1989.

Although the notarized statements (Items # 1 to # 5 above), indicate they have known the applicant since 1981, the statements do not supply enough details to lend credibility to an at least a 24 year relationship with him. For instance, the writers do not indicate how they date their initial meeting with the applicant or how frequently they had contact with him during the requisite period.

On his Form I-687, the applicant stated that he began work for the Green Landscape Nursery in Saugus, California, in 1989. However, the employment verification letter (Item # 6), from the nursery indicates that the applicant began working for the firm in 1982. Furthermore, the letter does not provide the applicant's address at the time of employment 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. 8 C.F.R. § 245a.2(d)(3)(i).

Although it was required that he do so by the director's Form I-72, the applicant has not furnished documentation for the years 1981 to 1988 from the Social Security Administration or for the years 1982 to 1988 from the Internal Revenue Service. The evidence furnished by the applicant does not mitigate his ineligibility based on his failure to provide the documentation required by the director.

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 employment history on his I-687, is accompanied by inconsistent evidence.

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 paucity 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.