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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L1

[redacted]

FILE: [redacted] Office: SAN DIEGO Date: JAN 0 5 2009
MSC 05 147 10206

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, San Diego, California. The decision is now before the Administrative Appeals Office on appeal. The case will be *sua sponte* reopened and 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 applicant had failed to submit documentation in response to his Notice of Intent to Deny (NOID), which was sent to the applicant on January 10, 2007. In the NOID, the director stated:

> You failed to provide evidence indicating you continuously resided in the U.S. before January 01, 1982 through May 4, 1988. You provided two additional affidavits by [redacted] and [redacted] You also provided a letter signed by your affiant, [redacted], where he indicates that in 2005 he sold his old property and discarded most of his old items in the trash with the exception of a receipt dated August 11, 1982. As of this date, you have only submitted documentation to prove you resided in [redacted] home the remaining years that [redacted] indicates in his letter, until June 1989. You have not submitted any other documentation and failed to advise this office of any reason why you were unable to submit them.

On appeal, the applicant establishes that he timely responded to the director's NOID. He states that after searching, he and [redacted] were able to find only one document which was a copy of his IRS Form W-2, Wage and Tax Statement, for 1988 and submits that document for the record. The applicant explains that he attempted to obtain a copy of his "DMV" record, but that office indicated that they did not have files that old. The applicant requests that his application be approved.

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 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 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. An affidavit dated December 13, 2006, from [redacted] of Calexico, California, who states that he has known the applicant since January 1980 to the present.

2. An affidavit dated September 19, 2006, from [redacted] of Riverside, California, who states that she has known the applicant since the early months of 1981 and that he lived in her house from June 1989 to April 2000.

3. An affidavit dated December 9, 2006, from [redacted] of Santa Ana, California, who states that he met the applicant in Calexico, California, around the end of 1981 at a family gathering that that he has personal knowledge that the applicant has resided in the United States from December 1981 to the present.

4. A copy of an affidavit dated September 14, 2006, from [redacted] of El Centro, California, in which he states that the applicant lived with him and his family in Calexico, California, since January 1982 through June 1989.

5. A copy of a rental agreement between the applicant and [redacted] for a property at [redacted] in Calexico, California dated January 1, 1982, along with copies of three rent receipts dated January 1, 1982, March 1, 1982 and April 1, 1982.

6. A letter dated December 2, 2006, from of El Centro, California, in which he states that he could not find any additional documentation for the applicant. The affiant attaches a copy of a receipt for an auto part that purchased on August 11, 1981, in Los Angeles showing the affiant's home address as in Calexico, California.

7. An employment verification letter, dated December 10, 2004, on the letterhead of farm labor contractor signed by Mr. states he was a general manager for from 1975 to 1987, and that the applicant harvested produce for , from January 1982 to April 1986. stated that the company paid all of its crew members in cash, did not keep records, and ceased operating in September 1987. Mr. stated that the information he was providing was based solely on his own memory.

On his Form I-687, the applicant stated that he resided at in Calexico, California, from June 1981 to November 1987. However, the affidavit from (Item # 4 above) and the applicant's rental agreement dated January 1, 1982, (Item # 5) specify his residential address as in Calexico, California, from January 1982 to June 1989.

On his Form I-687, he also stated that he worked from June 1981 to November 1987 for , a farm labor contractor. However, the employment verification letter from the former general manager of the firm (Item # 7) states he worked for the company from January 1982 to April 1986. This office questions how a **former** employee of is able to provide employment verification letters on the company letterhead. Additionally, the employment verification 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).

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 and residential histories on his I-687, are 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.