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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-070-11851

Office: CHICAGO

Date: JAN 26 2009

IN RE:

Applicant:

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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Chicago. The decision 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving that he entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. The director specifically noted that the bank statement from Palos Bank and Trust dated August 31, 1988 is insufficient to establish continuous residence throughout the requisite period.

On appeal, counsel for the applicant submits a brief in which he asserts that the applicant has submitted sufficient credible evidence to establish continuous unlawful residence in the United States throughout the entire statutory period. Counsel further claims that United States Citizenship and Immigration Services (USCIS) failed to notify the applicant of his right to seek the appointment of the Special Master.

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)(1) 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 (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 issue here is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States since before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

Along with his application for temporary resident status, the applicant submitted documents such as bank statements showing withdrawals and deposits in 2006 and an individual income tax return for 2005. These documents, however, do not relate to the requisite period, and thus will not be considered.

During his interview on October 16, 2006, the applicant testified that he first entered the United States through Mexico in June 1981 and, except for a single brief absence from the United States in June 1987, the applicant has resided in the United States continuously since 1981. At his interview, the applicant submitted a bank statement from Palos Bank and Trust dated August 31, 1988 and offered it as evidence of his presence in the United States throughout the requisite period. While the bank statement may be credible to show the applicant's presence in the United States in 1988, it is not probative as evidence of his continuous residence throughout the requisite period.

Upon review, the AAO finds inconsistencies between the address on the bank statement and the address of the applicant in 1988 as listed on his Form I-687. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No independent objective evidence has been submitted on appeal to reconcile the inconsistencies in the record, casting doubt to his credibility and his claim that he entered the United States in June 1981 and has resided continuously in the United States in an unlawful status throughout the requisite period.

The record also includes evidence that the applicant submitted in connection with his application for adjustment for permanent residence pursuant to Life Legalization Act (LIFE Act), namely, an affidavit from [REDACTED] and a personal declaration. In his affidavit, [REDACTED] states that he personally knows that the applicant has resided in the country (the United States) since 1981. No detailed information, however, is provided to show how the affiant first met the applicant or whether he has direct, personal knowledge of the address at which the applicant was residing during the entire requisite period. His brief statement as noted above without more detailed information is not sufficient to indicate that his relationship with the applicant probably did exist and that he, by virtue of that relationship, has knowledge of the fact alleged. For this reason, the affidavit has minimal weight as evidence of the applicant's eligibility for temporary resident status.

The applicant's declaration states that he resided at the following addresses when he first came to the United States in 1981: [REDACTED] and [REDACTED]. The applicant's Form I-687, however, does not reflect that he ever resided at those addresses. As indicated earlier, the applicant has the burden to resolve any inconsistencies in the record by independent objective evidence. In this case, the applicant has not submitted any evidence to resolve the inconsistencies in the record, casting doubt to his claim and credibility that he *actually* entered the United States in June 1981 and has resided continuously in the United States since that date.

In connection with his LIFE application, the applicant further claims through his counsel that he paid [REDACTED] to prepare his application for temporary resident status on May 19, 1990, and gave [REDACTED] all of the supporting documents such as family pictures, old family letters, and receipts to show that he has resided in the United States since 1981. The record, however, contains no supporting documents as described above.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail as well as inconsistencies noted in the record, seriously detract 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that 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.

On appeal, citing CSS/Newman Settlement Agreements paragraph 8, counsel for the applicant states that USCIS failed to notify the applicant of his right to seek the appointment of the Special Master. Pursuant to paragraph 8 of the Settlement Agreements, the appointment of the Special Master is required only when USCIS determines that the applicant is not a class member. The applicant's class membership is not an issue here, however. USCIS adjudicated the application, thereby treating the applicant as a class member. Therefore, the appointment of the Special Master is not required.

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