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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: SAN FRANCISCO

Date:

JUN 02 2009

[REDACTED] – consolidated herein]
[REDACTED] – consolidated herein]

MSC-06 098 14203
MSC-06 361 13343 – APPEAL

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:

[REDACTED]

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 District Director, San Francisco, California. 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 on January 6, 2006. The director denied the application, finding 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 and was continuously physically present in the United States for the duration of the requisite periods.

On appeal the applicant asserts that he has submitted sufficient credible documentation to establish that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status and was continuously physically present in the country for the duration of the requisite periods.

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) 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 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. 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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, *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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite periods consists of the following:

- A series of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s.
Photocopied identity cards from the State of California dated in 1983 and from the State of Texas, which the applicant claimed was issued in 1982.

- A photocopy of a Form 1040 U.S. Individual Income Tax for the year 1985, with the names of the applicant and his wife.
Photocopies of W-2 Earnings Statements from Sanraj Indian Crusine[sic], and from Gaylord Restaurant-Stanford, for the year 1985.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that although the applicant claims that he entered in the United States before January 1, 1982, resided continuously and was continuously physically present in the country through the periods required for legalization, other documentation in the record indicates otherwise. For example, a copy of a Form I-213 dated October 20, 1983, indicates that the applicant was apprehended at his place of employment on the said date. During interview, the applicant stated that he last entered the United States without inspection in October 1982. On the Optional Form 179 (biographic data for visa purpose), the applicant completed on January 15, 1985, the applicant indicated that he entered the United States in October 1982. In response to question # 18 – to list all the places he had lived since reaching the age of 16, the applicant stated that he lived in Stuttgart, Germany, from April 1979 to August 1982. On the Form I-589 (application for asylum) the applicant completed, he indicated that he entered the United States on October 1, 1982. And on Form I-217 (information on travel document or passport) the applicant indicated that he entered the United States in October 1982, and that he was deported from the United States to Canada on June 17, 1986. The applicant consistently stated on all the documentation previously completed in the record that he entered the United States in October 1982. The applicant did not submit any objective primary evidence to establish his initial entry into the United States, therefore, by his own admission, the applicant did not enter the United States until October 1982. Therefore, the applicant did not meet the threshold requirement that he must establish his entry into the United States before January 1, 1982 and that he continuously resided in the country from before January 1, 1982 through the date of filing his application.

At his legalization interview on July 21, 206, the applicant testified that he entered the United States in July 1981. The applicant submitted a series of affidavits and letters from individuals who claim to have known that he resided in the United States from 1981 as well as other documents such as two copies of identity cards from the States of Texas and California, purportedly issued in 1982 and 1983, copies of earnings statements from alleged former employers for the year 1985, and photocopy of a Form 1040 U.S. Individual Income Tax Return for 1985. These documents however, are contrary to the applicant's prior statements and other documentation previously submitted in the record.

On the Form I-687 (application for status as a temporary residence) completed by the applicant on March 21, 1990, the applicant indicated that he was self-employed as a salesperson, from July 1981 to the present (1990). Regarding his residences in the United States during the 1980s, the applicant indicated his addresses as follows: [REDACTED], from July 1981 to July 88; and [REDACTED] Los Angeles, California, from August 1988 to the present (1990). The applicant indicated only one absence from the United States in

December 1987. The applicant did not indicate any other absence from the United States during the 1980s. On the Form OF 179, the applicant indicated in response to question # 18 that he resided in Stuttgart, Germany, from April 1979 to August 1982; in Oakland, California, from October 1982 to February 1984; and in Berkeley, California, from February 1984 to the present (1985). The applicant completed an affidavit under penalty of perjury on July 21, 2006. On the affidavit, the applicant listed his employment and residences during the requisite periods as follows:

Employment:

- Kabab & Curry in Texas, from August 1981 through 1982 (exact month unknown);
Gaylord India Restaurant, San Francisco, 1982 to 1986 (exact month unknown);
Sun Raj Indian Cuisine in Santa Clara, from 1985 through 1986 (dates, months unknown);
Gaylord India Restaurant in Palo Alto, 1986 through 1989 (exact months unknown).

Residence:

- [REDACTED], Richardson, Texas, from 1981 through 1982, (exact dates/months unknown);
- [REDACTED], Oakland, Ca, from 1983 through 1984 (exact dates/months unknown);
- [REDACTED] Berkeley, California, from February 1984 through 1986 (exact dates/months unknown);
- Resided in India for a short time;
- [REDACTED] Palo Alto, California, from 1986 through 1990 (exact address, dates/months unknown).

The documentation listed above provides contradictory information about the applicant's initial entry and his continuous residence and continuous physical presence in the United States during the required period. The contradiction between the information on the Forms I-213, I-589, I-687, OF-190 and the sworn statement, regarding the applicant's initial entry into the United States and his continuous residence in the country cast considerable doubt on the veracity of his claim that he meets the continuous residence and continuous physical presence requirements for legalization. The contradictions discussed above and the lack of objective evidence in the record to justify or explain the contradictions, undermines the veracity of the applicant's claim that he entered the United States before January 1, 1982, as well as the overall credibility of the documentation in the record attesting to the applicant's residence and physical presence in the United States during the requisite periods.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of letters and affidavits – from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, photocopies of earnings statements, photocopies of identity cards from the States of Texas and California, photocopy of Form 1040, is suspect and not credible. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status and was continuously physically present in the country during the periods for legalization.

Beyond the decision of the director, the record reflects that the applicant was ordered deported by the District Director in San Francisco on August 12, 1986. On September 2, 1986, the applicant was deported from San Francisco on Pan United Airline flight # [REDACTED]. Said deportation is verified by INS records. The applicant subsequently reentered the United States without prior authorization as required. The applicant admitted in a sworn statement completed under penalty of perjury on September 20, 2001, that he was deported from the United States to Canada in 1986 and that he returned to the United States after two years of absence from the United States. The two years absence from the United States – from 1986 to 1988 – far exceeded the 45 days allowed for a single absence from the United States as well as the 180 days aggregate of all absences from the United States, and interrupted the applicant's continuous residence and continuous physical present requirements. The applicant did not indicate any emergent reasons that prevented him from returning to the United States within the time allowed in the regulation.

Furthermore, the applicant's deportation from the United States on September 2, 1986, rendered him inadmissible into the United States. Deportation during the requisite period for continuous residence in the United States (before January 1, 1982 through May 4, 1988) makes the applicant ineligible for LIFE legalization under 8 C.F.R. § 245a.15(c)(3). There is no evidence in the record that the applicant obtained prior authorization before reentering the United States following his deportation in 1986. Also, there is no evidence in the record that the applicant applied for and was granted a waiver of the inadmissibility. Thus, on these grounds as well, the applicant is not eligible for legalization under the LIFE Act.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

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