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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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FILE: [Redacted] MSC-06-026-11908

Office: PHOENIX

Date: JUN 22 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:
[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

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, or *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 of the Phoenix office, and 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 (LULAC) Class Membership Worksheet. 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 for the duration of the requisite time period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. The AAO has considered the applicant's assertions, reviewed all of the evidence,¹ and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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).

¹ 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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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 period consists of several affidavits, a letter, photographs, and a copy of a passport page. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains the affidavit of [REDACTED], the applicant's cousin, who states that she is aware that the applicant has been residing in the United States since 1980 because he is a relative of the family and has kept in touch. However, [REDACTED]'s statement is inconsistent with the statements of the applicant. First, at the time of filing the instant I-687 application the applicant did not list any residences in the United States during the requisite time period, instead stating that he was residing in Mexico from 1963 until 1986. Then, at the time of his interview regarding the instant I-687 application the applicant amended the application to state that he began residing in the United States some time in 1981. Due to these inconsistencies, the affidavit of [REDACTED] has minimal probative value.

The applicant has submitted the affidavit of [REDACTED] who states that she has known the applicant, who is the husband of her friend [REDACTED] in the United States since November 1981.

[REDACTED] also states that the applicant and his wife lived with her at [REDACTED] in Los Angeles, California for some period of time. [REDACTED] states that her friendship with the applicant continues to the present time. The applicant also submitted a letter from [REDACTED] who states that [REDACTED] came to his church, Our Lady of Victory Catholic Church in Los Angeles, to testify that the applicant and his wife lived in the church's vicinity from 1981 through the duration of the requisite period. However, the testimony of applicant and his wife is inconsistent regarding the dates when they state they resided with [REDACTED]. The applicant's wife states that she lived with [REDACTED] after the requisite time period. As stated above, at the time of filing the instant I-687 application, the applicant did not list any residences in the United States during the requisite time period, instead stating that he was residing in Mexico from 1963 until 1986. Then, at the time of his interview regarding the instant I-687 application, the applicant amended the application to state that he lived with [REDACTED] from 1986 for the duration of the requisite time period.² Due to these inconsistencies, the statements of [REDACTED] have minimal probative value.

The applicant submitted a copy of an affidavit of [REDACTED] who was the applicant's brother's first wife. [REDACTED] states that she has known the applicant since September 1981 and that she and the applicant have spent a lot of time together in the past 25 years..

The applicant also submitted a copy of an affidavit of [REDACTED], the son of [REDACTED], who states that he has know the applicant since 1976, and that he knows the applicant has been living in the United States since September 1981.

The record contains the affidavits of [REDACTED] and [REDACTED] husband and wife. [REDACTED] states that she is the applicant's niece. She states that she knows that the applicant has lived in the United States since 1980, and that from 1981 until 1986 he lived with her at an unstated address.

² Furthermore, at the time of the interview the applicant stated that he lived with [REDACTED] from 1986 until 1998. However, in support of a Form I-140, Immigrant Petition for Alien Worker, the applicant submitted a job experience letter from a [REDACTED] stating that the applicant was working full time as a machinist in Sonora, Mexico from January 1996 until February 1999. Since [REDACTED] stated that the applicant has lived continuously in the United States since 1981, the inconsistency of applicant's statement in the I-140 petition, while outside of the requisite time period, calls into question the affiant's knowledge of the applicant's continuous residence in the United States during the requisite period.

states that in 1986 the applicant moved to Guadalupe, California. states that he has known the applicant since 1981 when the applicant was living in Los Angeles. However, the statements of the affiants are inconsistent with those of the applicant and his wife. As stated above, at the time of filing the instant I-687 application the applicant did not list any residences in the United States during the requisite time period, instead stating that he was residing in Mexico from 1963 until 1986. Then, at the time of his interview regarding the instant I-687 application the applicant amended the application to state that he began residing in the United States in 1981 at an unstated address in California, then resided at an unstated address in Guadalupe, California from 1984 until 1986, and finally resided with affiant in Los Angeles, California from 1986 for the remainder of the requisite period. The applicant's wife identifies as the applicant's aunt, and states that she lived with from 1981 until 1984 in Calexico, California. Due to these inconsistencies, the affidavits of have minimal probative value.

The applicant submitted the affidavit of who states that he knows the applicant has been living in the United States since 1980 because at that time he was the applicant's neighbor. However, does not state where he was living at that time. In addition, the affiant's statement is inconsistent with the statements of the applicant. As stated above, at the time of filing the instant I-687 application the applicant did not list any residences in the United States during the requisite time period, instead stating that he was residing in Mexico from 1963 until 1986. Then, at the time of his interview regarding the instant I-687 application the applicant amended the application to state that he began residing in the United States in 1981. Due to these inconsistencies, the affidavit of has minimal probative value.

The record contains the affidavit of who states that she knows that the applicant was residing in the United States before 1982.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. In addition, the many discrepancies among the witnesses' statements detract from the credibility of the applicant's claim. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). Therefore, they have minimal probative value.

The remaining evidence in the record consists of photographs, a copy of a passport page, a copy of the birth certificate of the applicant's daughter, the applicant's statements and the instant I-687 application.

The applicant submitted eight photographs but the photos are not dated and the persons in the photos have not been identified by name. Photographs do not establish the applicant's continuous residence for the duration of the requisite period.

The record also contains a copy of one page of a passport of the applicant, showing entry stamps for the applicant's entries into the United States on a visitor's visa on April 19, 1984, June 22, 1984 and May 9, 1985. Although these entry stamps are evidence of the applicant's physical presence in the United States on those dates, they do not do not establish the applicant's continuous residence for the duration of the requisite period.

The applicant also submitted a copy of his daughter's birth certificate. The birth certificate states that the applicant was present in Mexico on December 11, 1986, when his daughter was born. The information on this birth certificate is inconsistent with the information contained on the instant application, where the applicant does not list this absence from the United States. This contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. This contradiction undermines the credibility of the applicant's claim of entry into the United States and continuous residence in the United States during the requisite period.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

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. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.