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FILE: [REDACTED]  
MSC-05-207-11037

Office: LOS ANGELES

Date: **MAR 09 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:



**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 if your case was 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 (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 by a preponderance of the evidence that he resided in the United States continuously for the duration of the entire requisite period. Specifically, the director noted that the affidavits submitted did not provide specific information concerning his entry and residence in the United States. The director also noted inconsistencies in the evidence of record.

On appeal, counsel for the applicant submits a brief in which he indicates that the applicant has submitted sufficient credible evidence to establish his eligibility for temporary resident status. Counsel further states that the inconsistencies in the record concerning the job description is caused by a minor typographical error and has been fixed. Counsel declares that the application along with all of the supporting documents is consistent with the applicant's testimony and that the director has erroneously denied the application as she did not properly weigh the affidavits and appeared to have predetermined the decision of denying the application without looking at all of the documents submitted.

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 sole issue in this case is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

During his interview with a United States Citizenship and Immigration Services (USCIS) officer on September 19, 2005, the applicant stated that he initially entered the United States in Buffalo, New York, through Canada without inspection in July 1981. As evidence that he has continuously resided in the United States since 1981, the applicant submitted affidavits from six individuals. Four affiants generally claim that they have known the applicant since 1981, while the other two state that the applicant used to work for them during the requisite period.

The affidavits from [REDACTED], and [REDACTED] all contain statements that the affiants have known the applicant since 1981 and that they attest to the applicant being physically present in the United States during the required

period. Ms. [REDACTED] further claims in her affidavit that the applicant worked as a cleaner at her store. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide 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 have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In his first affidavit dated April 30, 2002, [REDACTED] claims to have employed and trained the applicant as an apprentice in jewelry business from 1984 to about January 1990. In the second affidavit dated February 8, 2005, the affiant further states that although he employed the applicant from 1984 to 1990, he initially met the applicant in the summer of 1981 when the applicant came to his tailor shop to make shirts. According to the affiant, the applicant was his regular customer for about a year until 1982, when he started to work for [REDACTED]. However, at part #33 of the applicant's Form I-687, the applicant listed an employment with [REDACTED] from 1984 to January 1990. In response to the director's allegation that the affidavits from [REDACTED] were inconsistent with the applicant's statements, the affiant issued another affidavit stating that his statements concerning the applicant's job and residence in the United States were true and consistent throughout all of his affidavits. However, no evidence was submitted to reconcile the inconsistencies in the record, casting doubt to the affiant's credibility and the veracity of his claim that he employed and trained the applicant in the jewelry business from 1984 to 1990.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

Furthermore, letters from past employers must include specific information to be accorded evidentiary weight pursuant to 8 C.F.R. § 245a.2(d)(3)(i). Letters that do not comply with the

specific requirements do not have to be accorded as much evidentiary weight as letters that otherwise comply. Here, [REDACTED] fails to include the applicant's address at the time of employment, exact period of his employment, whether or not the information was taken from official company records, and where records are located and whether the Service may have access to the records. Because this letter-affidavit fails to include most of the critical information about the applicant's employment as set by the regulations, it can only be accorded minimal weight as evidence of the applicant's claim of eligibility for the benefit sought.

[REDACTED] in his affidavit claims that he employed the applicant at his own business called [REDACTED] in Los Angeles, California, from July 1981 to about August 1983. The affiant further states that the applicant's job duties consisted of cleaning the business premises and running errands. When asked about his employment during the requisite period during the interview, the applicant testified that he did cleaning work between 1981 and 1983. However, the director found that the applicant had stated on part #33 of his Form I-687 that he worked as a jewelry repairer during that time. The director denied the application for the inconsistencies between what [REDACTED] stated in his affidavit and what the applicant stated in his application. On appeal, the applicant submitted a signed declaration from his previous counsel stating that the job description at part #33 of the application was due to a typographical error.

Upon review, the AAO determines that the explanation from the applicant's previous counsel is reasonable and that the inconsistencies between what the applicant stated during the interview and what he or his counsel typed on his Form I-687 have no adverse impact on his credibility; however, the affiant's claim that the applicant did cleaning work at [REDACTED] is not consistent with the claim that [REDACTED], one of the affiants, makes in her affidavit. As noted earlier, [REDACTED] claims in her affidavit that the applicant did cleaning work at her store. The inconsistencies between [REDACTED]'s statements and [REDACTED]'s statements concerning the applicant's employment from 1981 to 1983 combined with the ambiguity in the applicant's testimony about his employment during the requisite period seriously undermine his credibility and claim that he entered the United States in July 1981 and continuously resided in the United States during the entire requisite period.

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.

Beyond the decision of the director, the AAO notes that on August 28, 1990, the applicant was convicted of theft, a misdemeanor, in the Superior Court of the State of California, Los Angeles County, in violation of California Penal Code Section 484(a). The applicant was sentenced to two years probation, ordered to pay fines in the amount of \$725.00, and to stay out of all K-Mart stores during the probationary period. Case no. [REDACTED] Petty theft constitutes a crime involving moral turpitude. *See United States v. Esparza-Ponce*, 193 F.3d 1133, 1136-37 (9<sup>th</sup> Cir. 1999). However, if the applicant's conviction is his only conviction for a crime involving moral turpitude, he may meet the petty offense exception. Nevertheless, his application for temporary resident status is denied for reasons stated above.

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