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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:

MSC 05 133 16846

Office: BOSTON

Date:

MAY 28 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. 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, Boston. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. 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.

On appeal, counsel asserts the denial of the applicant's case is an outrageous abuse of discretion by the director. Counsel argues that the weight of the evidence submitted militates in favor of a discretionary grant of temporary resident status and that with respect to criminal court appearances, it is his client's contention that the fact that he is not a criminal should not be a negative factor in his case.

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)(1).

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 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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
2. Unnotarized Affidavit in Support of Residence statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
3. A notarized statement dated April 22, 1997 from [REDACTED] who states he knows the applicant has resided in the United States for more than fifteen years.
4. Thirteen of the applicant’s money order receipts from L’Express in West Palm Beach, Florida, showing he sent funds to a person in Haiti from July 29, 1981 to October 26, 1986.
5. The applicant’s receipt dated January 19, 1985 showing no firm or address.
6. Twelve of the applicant’s rent receipts from [REDACTED] (emphasis supplied), from January 1, 1982 to November 2, 1982.
7. A letter dated October 2, 1991 from “[REDACTED]” (emphasis supplied), residing at [REDACTED] in Miami, Florida, who states the applicant lived with him from 1981 to December 1986.
8. A letter from [REDACTED] Counselor, Family Services, for the Haitian American Community Association of Dade County, Inc. who states the applicant has been a client of the institution since 1982.
9. The applicant’s medically excused absence form from [REDACTED] in Florida, explaining he has been the doctor’s patient from April 12, 1986 until July 16, 1990.

10. A notarized employment verification letter dated November 14, 1988 from [REDACTED] [REDACTED] who states that the applicant worked for him as a farm worker from May 1983 through April 1986.
11. A notarized statement dated November 14, 1988 from [REDACTED] who states that the applicant worked in the fields with him from January 1984 to December 1986.
12. An Affidavit of Employment from [REDACTED] a farm labor contractor, who states the applicant worked for him from April 1982 to October 1984.
13. A letter dated January 7, 1994 from [REDACTED] Director of Human Resources of The Commonwealth of Massachusetts Department of Mental Health who states the applicant has been employed by the Commonwealth of Massachusetts since October 21, 1984.
14. The applicant's Republic of Haiti driver's license issued to him in Port-Au-Prince on October 8, 1986.

The statements, money order receipts and receipt (Items # 1 through # 5) have been reviewed in juxtaposition to the other material in the record. These documents are not sufficiently probative to establish the applicant's continuous residence in the United States since before January 1, 1982 through the requisite time period.

On his Form I-687, the applicant stated he resided at [REDACTED] in Miami, Florida from November 1981 to July 1990. He provides rent receipts (Item # 6) from [REDACTED] and not Louis [REDACTED] to substantiate his claim. Also, the letter from [REDACTED] (Item # 7) states the applicant lived at that address from 1981 only until 1986.

On his Form I-687 that he signed on June 15, 1990, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list the Haitian American Community Association of Dade County, Inc. (Item # 8). The applicant's medically excused absence form from [REDACTED] [REDACTED] in Florida, (Item # 9) does not appear credible because the letter from [REDACTED] (Item # 13) reported that he was working in Massachusetts from October 21, 1984 to January 7, 1994 and not in Florida. The notarized employment verification letter (Item # 10) from [REDACTED] [REDACTED] as the applicant's employer and the notarized statement from [REDACTED] as a co-worker (Item # 11) appear to contain inconsistent information.

On his Form I-687, the applicant did not claim that he was ever employed by [REDACTED] (Item # 12) or by The Commonwealth of Massachusetts (Item # 13). Additionally, the employment verification letters (Items # 12 through # 13) do not provide the applicant's address at the time of employment as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i).

On his Form I-687, he states that his only absence from the United States after his first entry in 1981 was a family visit to attend a funeral in Haiti from July 1, 1987 to July 29, 1987. However, the record reflects that his Republic of Haiti driver's license was issued to him in Port-Au-Prince on October 8, 1986 (Item # 14). Additionally, his Form G-325 A, Biographic Information, he signed on March 12, 1996, indicates that he resided in Port-Au Prince, Haiti, from 1975 to July 1997. The difference between the applicant's statement on his Form I-687 and his Form G-325 A casts additional doubt on his claim that he resided continuously in the United States during the requisite period.

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 applicant has failed to offer any explanation for the substantive discrepancies.

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's asserted employment, affiliation and residential histories on his Form 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 absence 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.