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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 211 11130

Office: LOS ANGELES

Date: **NOV 18 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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, California, 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 Class Membership Worksheet. The director determined 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 period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he does not have any receipts as he received his wages in cash and he paid all his bills in cash. The applicant reasserts the veracity of his claim to have entered the United States in 1981. The applicant asserts that at the time of his interview, he was very nervous and "I got very confused with the dates; and employments; I responded quickly without taking time to think of what I was being asked I felt harassed by the officer, it was not an interview, it was more of an interrogation."

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit from [REDACTED] who indicated she met the applicant in December 1982 “when he first came to the U.S.A. due to the fact that he married my niece.” The affiant attested to the applicant’s residence in Panorama City, California and indicated she has remained in touch with the applicant since that time.
- An affidavit from [REDACTED] who indicated that the applicant was in his employ for two to three days a week from January 10, 1984 to November 1986.
- An affidavit from [REDACTED] who indicated that he was a coworker of the applicant from 1986 to 1988. The affiant attested to the applicant’s moral character.

- An affidavit from [REDACTED] who attested to the applicant's employment at Olympic Meat Market from August 1981 to December 1992.
- An affidavit from [REDACTED] who indicated that the applicant resided with her from March 1981 to November 1986 at [REDACTED]
- Photographs the applicant claimed was taken in 1985 and 1986 in the California.
- An affidavit from [REDACTED], who indicated that she has personally known the applicant since April 1988.
- An affidavit from [REDACTED], who attested to the applicant's 1981 arrival into the United States. The affiant indicated that she would speak to the applicant on the telephone and they would visit each other.

On January 23, 2007, the director issued a Form I-72, which requested that the applicant submit a birth certificate for his son who was born in 1988 along with evidence establishing the affiants' identity and residence in the United States during the requisite period. The application was given 87 days in which to submit the requested documents.

A review of the record reflects that the applicant's response to the Form I-72 was received on April 4, 2007. The director, however, did not wait the 87 days before rendering her decision. The director, in denying the application, on April 4, 2007, noted that the applicant failed to submit a response to the Form I-72. The director determined that the affidavits submitted did not contain sufficient information and corroborative documents and, therefore, lacked probative value. The director concluded that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982. The applicant's response to the Form I-72 will be considered on appeal.

In response to the Form I-72, the applicant submitted copies of documents that were previously provided along with:

- A copy of his son's birth certificate with English translation, which reflects the son was born in Mexico on January 22, 1988.
- Documentation establishing some of the affiants' identities and residences in the United States.
- Documentation establishing [REDACTED] identity and her company permits since March 1, 1984.
- An affidavit from [REDACTED] who indicated, "I have known of the presence of [the applicant] in the United States since 1981. At that time [REDACTED]"
- A statement dated January 18, 2005, from [REDACTED] who indicated that she was introduced to the applicant in the United States in 1983 by a mutual friend. The affiant attested to the applicant's moral character.

The applicant also submitted a statement dated January 5, 2005, from [REDACTED] that has no probative value as the affiant attested to the residence of someone other than the applicant.

The statements issued by the applicant have been considered. However, the evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

██████████ indicated that she has known the applicant since December 1982 because the applicant married her niece. However, the record reflects that on June 10, 2003, the applicant filed a Form I-485, Application to Register Permanent Residence under the Legal Immigration Family Equity (LIFE) Act and a Form G-325A, Biographic Information.¹ On the Form I-485, the applicant indicated that he was single and on the Form G-325A, the applicant indicated he had no spouse. Furthermore, the applicant, on his Form I-687 application, did not claim residence in Panorama City until 2002.

██████████ in her affidavit, indicated that the applicant resided with her from March 1981 to November 1986 at ██████████. However, ██████████ in her affidavit, attested to the applicant's residence at ██████████.

The employment affidavit from ██████████ raises questions to its authenticity as the applicant on his Form I-687 application did not claim employment with this affiant. Furthermore, the employment affidavits from ██████████ and ██████████ failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiants also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. 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.

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

¹ The Form I-485 was denied on June 21, 2004 by the Director, National Benefits Center.