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FILE: [REDACTED]  
MSC-05 244 15772

Office: LOS ANGELES

Date: NOV 20 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. 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.

Perry J. 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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since 1980, 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 June 1, 2005. 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 period.

On appeal the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the requisite period.

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 AAO determines that the applicant has failed to meet his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. On a prior Form I-687 the applicant completed on October 5, 1990 and the accompanying affidavit, the applicant stated that he first entered the United States in January 1980 and resided continuously in the country through the requisite period except for one brief trip outside the United States to Mexico from July 12 to July 26, 1987. On the same form, the applicant indicated that he has a son – [REDACTED] – born in Mexico on April 9, 1983. The applicant did not indicate and the record does not reflect that the applicant's wife resided in the United States with the applicant during the 1980s. Thus, the birth of the applicant's son in Mexico in April 1983 strongly suggests that the applicant was in Mexico at the time of his

conception in 1982 and casts doubt on the veracity of the applicant's claim that he has been residing in the United States from before January 1, 1982.

On the current Form I-687 the applicant filed on June 1, 2005, he indicated that he has been a self-employed mechanic from January 1980 to July 2004. However, on the Form I-687 he completed in October 1990, the applicant listed the following employment information since his entry into the United States:

- [REDACTED] mechanic from 1980 to 1984;
- [REDACTED] from 1985 to 1986;
- [REDACTED] from 1987 to 1988;
- [REDACTED], from 1989 to March 1990; and
- Self-employed mechanic since March 1990.

The inconsistencies in the information provided by the applicant on the two Form I-687s cast serious doubt on the veracity of the applicant's claim that he has been residing in the United States before January 1, 1982 through the requisite period.

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. *See 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.*

The file contains other conflicting documents submitted by the applicant in support of his application. For example, the record includes two GEMCO club membership cards purportedly issued to the applicant on March 25, 1980 and October 15, 1981. The March 1980 card was addressed to the applicant at [REDACTED] and the October 1981 card was addressed to the applicant at [REDACTED]. The applicant however, indicated his address for the same period as [REDACTED], [REDACTED]. The applicant did not claim any of the addresses on the cards as his address in the United States during the 1980s or at any other time.

The record also reflects copies of United States Postal Service registered mail receipts with postmark dates of December 24, 1979, January and February 1980, issued to the applicant for mail he sent to individuals in Mexico. These receipts do not appear to be genuine because the applicant indicated that he entered the United States in January 1980 and therefore could not have mailed something from the United States to Mexico when he was not even in the United States. Additionally, the applicant's address on the 1980 receipts – [REDACTED] – is inconsistent with the address the applicant provided on the Form I-687. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, *id.*

As discussed above, the applicant has provided conflicting statements and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s as well as various other receipts – is suspect and non substantive. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

For example, [REDACTED] claims that the applicant resided with him at [REDACTED] [REDACTED] from 1980 to 1984. This statement is contrary to the residential address provided by the applicant on the Form I-687 for the same period. [REDACTED] and [REDACTED], both claim to have known the applicant since 1975, but did not specify when and where they met the applicant in the United States and for how long. It is noted that the applicant claims that he entered the United States in January 1980. The affiants who submitted affidavits on behalf of the applicant do not have direct personal knowledge of the events and circumstances of the applicant's residency in the United States. None of the affiants provided documentation to establish their own identities and residence in the United States during the requisite period. For all the reasons discussed above, the affidavits have little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The employment letters from three businesses dated in 1990 – [REDACTED] [REDACTED] and [REDACTED] – stating that the applicant was employed by the businesses at various times from 1980 through 1988, do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because the authors did not identify the applicant's address at the time of employment; did not declare whether the information about the applicant was taken from company records; and did not indicate the location of such records and whether they were available for review. The letters are not accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed during any of the years indicated. Finally, the employment letters are contrary to the employment information provided by the applicant on the Form I-687 he filed in June 2005. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582. For the reasons discussed above, the employment letters have little probative value. They are not persuasive evidence that the applicant resided continuously in the country for the duration of the requisite period. Therefore, it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

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.