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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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[Redacted]

FILE: [Redacted]
MSC 05 222 11474

Office: LOS ANGELES

Date: **NOV 23 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. 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 puts forth the same rebuttal that was submitted in response to the Notice of Intent to Deny, and considered by the director in her decision to deny the application. The applicant asserts, "I never had the chance to explain any conflict that may be was [sic] cause of any misunderstanding of my oral interview."

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.

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

- A letter dated June 13, 1990, from [REDACTED] in Garden Grove, California, who indicated that the applicant has been in his employ since May 26, 1987.
- An affidavit from [REDACTED] who indicated that he has been personally acquainted with the applicant in the United States since February 1983.
- Affidavits from [REDACTED] who attested to the applicant's residence in Orange County, California since June 1983. The affiant indicated that the applicant “is my personal friend and distant relatives.” The affiant indicated that she drove the applicant to the bus station in Tijuana, Mexico on December 20, 1987 and picked him up in San Ysidro, California on January 4, 1988.
- A letter from [REDACTED] of San Pablo Homes Inc., who indicated that the applicant was in her employ in landscaping from June 1981 to May 1987.
An affidavit from [REDACTED] who attested to the applicant's residence in San Clemente California from 1981 to 1986 and in Anaheim, California since 1986. The affiant indicated she met the applicant in Mexico when she was three years of age. The affiant indicated, “I moved to the USA and after a few years I found out that [the applicant] was living here also. The first time I saw [the applicant] was in a Family

Reunion in January 1981.” The affiant indicated she sees the applicant very often and has maintained a good relationship with the applicant .

- A Form 1099G, Report of State Income Tax Refund, from the California Franchise Tax Board for the 1987 tax year.
- Wage and tax statements for 1982, 1984, 1985 and 1986 and an earnings statement from San Pablo Home’s issued on February 22, 1986.
- A money order dated February 1, 1984.
- An unsigned Form 1040A, US Individual Income Tax Return, for 1983.
- Earnings statements from VIP Temporary Services for the periods ending February 20, 1981 and February 13, 1982.
- A Notice of Stored Vehicle dated April 16, 1983 from the Sana Ana Police Department in California.
- A California driver license issued on February 22, 1988.

On October 13, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that he failed to establish he entered the United States prior to January 1, 1982 as his oral testimony at the time of his interview conflicted with the documents submitted in support of his application.

The applicant, in response, asserted that he has been residing in United States since May 1981. The applicant asserted he has provided sufficient documentation to establish his continuous residence during the requisite period. The applicant asserted, in pertinent part:

But if I am not able to submit additional documentary evidence because, during such period of time I did not have any bills under my name, I was paid in cash most of the time so I do not have employment records such us [sic] check stubs or W-2 forms, and due to the fact that I did not have a Social Security Number, I could not open a bank account or apply for credit cards.

* * *

Regarding the interview testimony I was so nervous [sic] because the importance of that moment that my family and my future was in those minutes and that cause any inconsistencies on my answer’s [sic] but I think that any interviewer officer have to understand that’ and don’t try to make confusion with the way and the intention of the question’s [sic].

The applicant submitted copies of documents that were previously provided.

The director determined that the applicant’s response failed to overcome the grounds for denial and denied the application on December 16, 2005.

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

During the adjudication of the appeal, information had come to light that seriously compromised the credibility of the applicant's claim. Specifically:

1. The employment letters from [REDACTED] and [REDACTED] lacked probative value as they 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, [REDACTED] and [REDACTED] 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.
2. The affidavits of residence submitted only attested to the applicant's residence in the United States since 1983 and the affiants provided no details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.
3. The 1983 Form 1040A had little evidentiary weight or probative value as it was not certified as being filed.
4. In response to the Notice of Intent to Deny issued on October 13, 2005, the applicant indicated, "I do not have employment records such as check stubs, or W-2 Forms and due to the fact that I did not have a Social Security number, I could not open a bank account or apply for credit cards." This statement, however, contradicted the documents the applicant provided, such as check stubs and W-2 forms, in an attempt to establish his eligibility for the benefit being sought. No explanation had been provided for this contradiction.
5. The pay stubs the applicant provided from VIP Temporary Services in Orange, California raised questions to their authenticity as he did not claim employment at this company on his Form I-687 application during the requisite period.
6. In a separate proceeding relating to the applicant's LIFE application,¹ the director issued a Form I-72 on January 7, 2005, requesting the applicant submit a printout of his earnings from the Social Security Administration. On appeal from the denial of the Form I-687 application, the applicant indicated that he had submitted the requested

¹ The LIFE application was denied by the director on October 6, 2006. The applicant filed a Form I-290B, Notice of Appeal, without the required fee. As such, the appeal was improperly filed.

document. The record reflects that the applicant did not respond to the Form I-72 issued on January 7, 2005, but rather he responded to a Form I-72 issued on August 23, 2005, pertaining to his current Form I-687 application. The record does not include the requested document from the Social Security Administration.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO issued a notice to the applicant on August 5, 2009 informing him that it was the AAO's intent to dismiss his appeal based upon the inconsistencies noted above. The applicant was informed that the supporting documents indicated he had used two different social security numbers during 1981-1988 timeframe and, therefore, he should request the earnings under those social security numbers be transferred to his current social security number prior to obtaining the printout from the Social Security Administration. The applicant was granted 30 days to provide evidence to overcome, fully and persuasively, these inconsistent findings and to provide a printout of his earnings from the Social Security Administration.

Counsel, in response, asserted that it is impossible to obtain a new employment letter from [REDACTED] because the affiant had passed away and her organization, San Pablo Homes, no longer exists. Counsel asserts that nevertheless, the employment letter still has probative value in terms of the applicant's continuous residence.

In regards to the employment with [REDACTED] counsel provides an updated letter from the affiant, who indicated that according to the company records the applicant has been employed since May 26, 1987 and at the time of hiring, the applicant resided in Anaheim, California at [REDACTED]

Counsel asserts that all the documents submitted prior to the current application were prepared by notaries. Counsel asserts that the applicant does not speak English; the documentary evidence and the applicant's statement were in the English language; and his application forms were not well-prepared. Counsel asserts, "[h]owever, absent material inconsistencies, this simple omission does not amount to an egregious enough mistake which would merit denial of this application."

Counsel asserts that the applicant has visited the Social Security Administration twice; however, the Social Security Administration was unable to comply with the request on such short notice. Counsel provides a Form SSA-2458, Report of Confidential Social Security Benefit Information, dated August 18, 2009, which indicated that the Social Security Office in Anaheim, California was currently working on transferring wages that were earned by the applicant under a different social security number. The form further indicates that the case would be completed in approximately a month and the applicant would receive correspondence explaining that the case had been completed and the earnings would reflect on his record. Counsel requests a 60-day extension in which to submit the documentary evidence from the Social Security Administration.

Counsel submits copies of documents previously provided along with:

- A declaration from the applicant who reaffirms his employment with [REDACTED] from 1981 through May 1987 and his residences in California since 1981.
- An affidavit from a cousin, [REDACTED] who indicated that she and the applicant crossed the border in 1981, and they both worked for [REDACTED]. The affiant attested to the applicant's employment with [REDACTED] until 1987 and to his continuous residence in the United States since 1981. The affiant indicated that while employed by [REDACTED], she saw the applicant every day and since 1987 she has seen the applicant once every two months.
- An affidavit from the applicant's wife, [REDACTED] who attested to the applicant's 1981 departure from Mexico to the United States. The affiant indicated that she visited the United States in 1983 for a few months and again in 1987. The affiant attested to the applicant's residence since 1987 in Anaheim, California at [REDACTED].

The statements from counsel have been considered. However, counsel has not provided a plausible explanation regarding the applicant's use of a social security number during the requisite period. In response to the Notice of Intent to Deny and again on appeal, the applicant clearly indicated he did not have a social security number, but nevertheless, he provided earnings statements and W-2 forms that listed his name and a social security number.

The applicant provided documentation from the Social Security Administration dated August 18, 2009, indicating that his case would be completed within four weeks. The applicant has failed to provide any follow-up communication from the Social Security Administration or an explanation why said documentation cannot be provided.

The applicant's failure to submit independent and objective evidence to overcome the preceding contradicting information brings into question the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982. 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. See *Matter of Ho*, 19 I&N Dec. at 591-92.

Therefore, based upon the foregoing, 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.