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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
and Immigration
Services**

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FILE: [REDACTED] Office: LOS ANGELES Date: **OCT 27 2009**
MSC 05 223 10158

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 remanded for further action, you will be contacted.

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. 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, 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 states the applicant was erroneously advised by an immigration consultant to apply for asylum as a means of obtaining lawful permanent residency. Counsel further states that although the applicant has provided testimony to an Immigration Judge that he first entered the United States in 1984 and to an Asylum Officer that he first entered the country in 1988, the best basis for determining his period of unlawful residence are the affidavits that were submitted in his behalf.

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)(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). To meet his or her burden of proof, 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. 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.* at 80. 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 petitioner 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, 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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
3. A notarized Affidavit of Witness statement from [REDACTED] who states she has known the applicant to have resided in the United States since 1988.
4. A Notarized employment verification letter and two Affidavit of Witness statements from [REDACTED] the owner of [REDACTED] who states the applicant has been employed by him since 1981.
5. A receipt from [REDACTED] in Los Angeles, California, dated November 11, 1984 for the purchase of a guitar.
6. A U.S. Postal Service Form 3806, Receipt for Registered Mail, postmarked November 13, 1984 showing the applicant sent an article from California to a person in Mexico.

[REDACTED] and [REDACTED] (Items # 1 through # 3 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as

photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. Additionally, the employment verification letter (Item # 4) does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The receipt from Shireson Bros, Inc. (Item # 5) is of little probative value as it does not identify the applicant as the purchaser of the item. Based on the applicant's U.S. Postal Service Form 3806, Receipt for Registered Mail, (Item # 6), the AAO accepts that he was present in the United States for a part of the requisite period.

On his Form I-687, the applicant stated he began residing in the United States in November 1981. However, in removal proceedings held on November 20, 2003, an Immigration Judge in Los Angeles, California, asked the applicant "when did you first come to the United States?" The applicant answered "1984." On his current Form I-687, the applicant stated he resided at "[REDACTED] in North Hollywood, California 91605" from November 1981 to May 1985. However, on his Form I-687 signed January 7, 1991, he stated that he resided at "[REDACTED]" from November 1981 to March 1986.

On his Form I-687, he states that his only absence from the United States after his first entry was a visit to Mexico during May 1987. However, at his interview on February 1, 2007, he revealed he was present in Mexico for the birth of all of his children which would include his son [REDACTED] on August 23, 1982 and his son [REDACTED] on August 23, 1983 during the period of required residence. The difference between the applicant's statement on his Form I-687 and his interview testimony 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 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 absence 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.

According to final court dispositions in the record, the applicant was convicted by a Judge in the Municipal Court of Glendale Judicial District, County of Los Angeles, State of California, on August 5, 1993 under the name [REDACTED] of driving with a suspended license, a misdemeanor [REDACTED]. On February 14, 1997, he was convicted by a Judge in the Municipal Court of Van Nuys Courthouse Judicial District, County of Los Angeles, State of California, of driving while having a 0.08 or higher blood alcohol level, a violation of Vehicle Code (VC) Section 23152(b), a misdemeanor. [REDACTED]

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