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[REDACTED]

FILE: [REDACTED] Office: DALLAS  
[REDACTED] consolidated herein]  
MSC-06 061 10183  
MSC-08 142 11601 - APPEAL

Date: **OCT 30 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. 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 Dallas, Texas. 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 1981, 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 November 30, 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. In his decision, the director cited inconsistencies between the documents the applicant submitted in support of his Form I-687 application and his statements on a Form I-700 (Application for Temporary Resident Status as a Special Agricultural Worker) he filed on June 8, 1988.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period. Counsel submits copies of documents previously submitted in the record. No new evidence is submitted with the appeal.

The AAO, will not base its determination on information contained in the Form I-700, submitted by the applicant on June 8, 1988, as well as statements or documents submitted in support of the I-700, and information revealed by the adjudication of the I-700. As discussed below, the AAO has made a *de novo* review of the evidence of record as it pertains to the requisite continuous residence, and bases its decision solely on that record without reference to the I-700 application or information pertaining to that application. The AAO hereby withdraws all reference(s) to the I-700 application in the director's decision.

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).

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. Here, the applicant has failed to meet his burden.

In support of his claim of continuous residence in the United States for the requisite period, the applicant submitted multiple copies of affidavits from [REDACTED] attesting that he employed the applicant to work at [REDACTED] in Wasco, California, during the 1980s as well as affidavits from individuals who claim to have worked with or otherwise known the applicant resided in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant, who claims to have entered the United States in 1981, was only 14 years old when he allegedly entered the United States in 1981. The applicant did not submit any credible document to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988 to establish his continuous residence in the country. The applicant did not submit any school or medical records, which is reasonable to expect from a child of 14 years residing in the United States in 1981. In addition, the applicant did not provide credible documentation as to how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was 14 years old, and therefore, would have had to have been provided for and cared for by an adult.

The record reflects that the applicant submitted three different statements from [REDACTED] in support of his application. In an affidavit dated January 11, 2008, [REDACTED] attests that he and his wife admitted the applicant into their home in 1982 because he and the applicant's parents were good friends, that one year later, the applicant began to help his wife at her restaurant as a dishwasher and cleaning person, and that on March 3, 1985, he sent the applicant to be trained "on field work on grape wines" a position he held until December 1987. In a letter dated January 11, 2008, [REDACTED] who identified himself as the owner of [REDACTED] in Wasco, Texas, attests that the applicant was employed from May 3, 1985 to March 28, 1986 as a "trainer and pruning grapes," and that the applicant worked for "one-hundred two" days. In an affidavit sworn to on December 7, 2006, [REDACTED] attests that the applicant worked for him under the assumed name of [REDACTED] from January 1982 to December 1987, performing various functions such as gardening, planting, weeding, training, pruning and harvesting grapes at [REDACTED]

The various statements of employment by [REDACTED] listed above, do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records; and did not indicate the location of such records and whether they were available for review. Nor are the statements 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 in question. Additionally, the letter and affidavits are contradictory to each other and contradictory to the employment information provided by the applicant on the Form I-687 he filed in 2005. Furthermore, neither the applicant nor [REDACTED] provided evidence to show that the applicant was ever known by the assumed name of [REDACTED]. On the Form I-687 the applicant filed in 2005, in response to question #4 where applicants are asked to provide other names used or known by, the applicant indicated "none."

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. For all the reasons discussed above, the statements from [REDACTED] have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

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 an affidavit from [REDACTED] who claims to have worked with the applicant from May 1985 to March 1986 – is suspect and not credible. The affiant does not provide any information about the applicant's whereabouts prior to May 1985; the affiant does not have direct personal knowledge of the events and circumstances of the applicant's residence in the United States. The affiant does not provide any document to establish her identity and residence in the United States during the 1980s, and does not provide documents – such as photographs, letters or the like – demonstrating her personal relationship with the applicant in the United States during the years. Most importantly, as the affidavit does not attest to the applicant's residence in the United States prior to January 1, 1982, the affidavit has little probative value as credible evidence of the applicant's continuous residence in the United States during 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.

Based on the analysis of the evidence in the record, the AAO concludes that 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.