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FILE: [REDACTED]
MSC-05 244 13930

Office: LOS ANGELES

Date: **SEP 04 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.

John F. Grissom
Acting 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 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 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 legalization.

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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of filing the application or through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Here, the applicant has failed to meet this burden.

The documentation that the applicant submits in support of his claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status during the requisite period consists of a series of affidavits from individuals who claim to have resided with or otherwise known the applicant during the 1980s and numerous photocopied rental receipts with handwritten notations of the applicant's name and the address of the rental property as [REDACTED] Van Nuys, California, dated from 1984 to 1988. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant who was around 13 years in 1981, did not submit any evidence of how he traveled and entered the United States in 1981, or how he took care of himself including paying rents. Nor did the applicant submit any school or hospital records which are expected from a child of 13 years living in the United States in 1981.

The record reflects that the applicant submitted conflicting statements and documentation in support of his application. On the Form I-687 he filed in June 2005, the applicant indicated the following as his residential addresses in the United States during the requisite period:

- [REDACTED] from 1981 to 1983;
- [REDACTED] from 1983 to 1984;
- [REDACTED] from 1984 to 1986;
- [REDACTED], from 1986 to 1988; and
- [REDACTED] from 1988 to November 2004.

While the applicant indicated on the Form I-687 that he resided in San Antonio, Texas, from 1984 to 1986, all the affidavits submitted on behalf of the applicant state that the applicant continuously resided in California from before January 1982 through 1988. Contrary to the applicant's statement on the Form I-687, the photocopied rental receipts indicate that the applicant resided in California during the period 1984 through 1988. The contradictory statements and documents regarding the applicant continuous residence in the United States, cast serious doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country 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. *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.*

As noted above, the applicant has provided contradictory statement and documentation in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits from individuals who claim to have resided with or otherwise have known the applicant during the 1980s, as well as the numerous photocopied rental receipts – is suspect and not credible.

The affidavits in the record – dated in 2005 – are from individuals who claim to have resided with or otherwise known the applicant during the 1980s. The affidavits all have minimalist formats with virtually identical wording and little personal input by the affiants. Considering the length of time they claim to have known the applicant in the United States – in most cases since 1981 – the affiants provided remarkably few details about the applicant’s life in the United States, such as where he worked, and the nature and extent of their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants’ personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits 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 requisite period.

The numerous rental receipts dated from 1984 through 1988, have handwritten notations of the applicant’s name and the address of the rental property as [REDACTED] van Nuys, California. The receipts have no date stamps or other official markings to verify the dates they were written. The receipt dated from 1984 through 1986 showing that the applicant resided at [REDACTED] in Van Nuys, California is contrary to the address specified by the applicant on the Form I-687. As stated above 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.* For the reasons discussed above, the receipts have little probative value. They are not persuasive evidence of the applicant’s continuous residence in the United States during 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.