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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529 - 2090

**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

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FILE:

MSC-06-083-12019

Office: LOS ANGELES

Date:

**SEP 11 2009**

IN RE:

Applicant:

APPLICATION:

Application for Temporary Resident Status under 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, or *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 of the Los Angeles office 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because he 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 time period.

On appeal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence on appeal. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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) 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.

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<sup>1</sup> 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 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of an employment verification letter and several documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains two employment verification letters from [REDACTED] Chief Financial Officer of Rubio Machinery Inc., in California. In one of the letters, the witness states that he has known the applicant, also known to the witness as [REDACTED], since 1991 and that the applicant worked for the company after the requisite statutory period.<sup>2</sup> In the second affidavit, the witness states that the applicant has worked for the company since May 3, 1982. Due to these inconsistencies these employment verification letters have minimal probative value.

Furthermore, the employment verification letters of [REDACTED] fail to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letters do not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to his own recollection or any records he or the company may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. For these additional reasons, these documents have minimal probative value.

The applicant has submitted a statement of earnings from the Social Security Administration listing earnings for the applicant for the years 1981, 1982, 1983, 1985 and 1986. Although the listing of earnings for the years 1981, 1982, 1983, 1985 and 1986 provides some evidence of the applicant's residence in the United States in those years, it does not establish the applicant's residence in the United States for the duration of the requisite statutory period. In addition, the

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<sup>2</sup> In the first letter the witness states that the applicant began working for [REDACTED] on May 3, 2002. This statement is also inconsistent with a statement of social security earnings which does list earnings for the applicant with [REDACTED] until 2004. While outside of the requisite period, the inconsistency calls into question the applicant's continuous residence in the United States during the requisite period.

statement of earnings is inconsistent with the applicant's statement in the I-687 application that he began working for Fernal-Tec Inc., in 1980.

The record contains a copy of a California identification card and driver's license issued January 24, 1979 and May 20, 1979, respectively. The applicant has also submitted a copy of an undated California identification card which lists the alias of [REDACTED] and a different date of birth than that of the applicant.

The applicant has submitted a copy of a W-2 form and the first page of a federal income tax return for 1981, filed in the names of [REDACTED] and [REDACTED]. The W-2 form lists an address of [REDACTED] in San Dimas, California. This is inconsistent with the information contained in the I-687 application, in which the applicant does not list this address as a residence address.

The record contains a copy of a W-2 form for 1982 and the first page of a federal income tax return for 1982 and 1983, filed in the names of [REDACTED] and [REDACTED].

The applicant has submitted a copy of a W-2 form and a federal and state income tax return for the year 1984, filed in the names of [REDACTED] and [REDACTED]. The W-2 form lists an address of [REDACTED] in Baldwin Park, California. The state tax return at page two also lists a principal address at [REDACTED]. This is inconsistent with the information contained in the I-687 application, in which the applicant states that he did not begin living at this address until 1986. In addition, these forms are inconsistent with the statement of earnings from the Social Security Administration which does not list any earnings for the applicant for 1984.

Further, the record contains a copy of a 1984 financing agreement for a [REDACTED] in the names of [REDACTED] and [REDACTED], and a copy of a statement of account from Northwest Financial in the name of [REDACTED] dated May 22, 1984.

The applicant submitted a copy of a W-2 form and the first page of a federal income tax return for 1985, filed in the names of [REDACTED] and [REDACTED]. The applicant also submitted a copy of a statement of account from Northwest Financial in the name of [REDACTED] dated June 27, 1985.

The record contains a copy of a W-2 form and the first page of a federal income tax return for 1986 filed in the names of [REDACTED] and [REDACTED]. The applicant also submitted a copy of two bills in the name of [REDACTED] from Websters Refuse dated September 15, 1986 and December 24, 1986.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant. All of the tax returns and the 1984 financing agreement are inconsistent with the marriage certificate submitted by the applicant in which his wife's name is listed as [REDACTED] and the date of marriage is 1972. Furthermore, the tax returns of 1981, 1982, and 1984 list four dependent children named [REDACTED].

██████████ and ██████████<sup>3</sup> This is inconsistent with the applicant's statement at interview that he has four children, named ██████████ and ██████████ of whom one was born in 1988 and one was born in 1985.<sup>4</sup>

The applicant has submitted copies of five bills in the name of ██████████ from Websters Refuse dated March 13, 1987 through March 14, 1988. Although these documents provide some evidence of the applicant's residence in the United States for the period of time from March 13, 1987 through March 14, 1988 they do not establish the applicant's continuous residence for the duration of the requisite statutory period.

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application. As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The many inconsistencies regarding the dates when the applicant resided at a particular location within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. In addition, the many inconsistencies regarding the names of members of the applicant's family are material to the applicant's claim, in that they have a direct bearing on the credibility and reliability of the evidence which the applicant has submitted in support of his claim. Further, due to these inconsistencies, the AAO finds that the applicant has failed to establish that he used the assumed name of ██████████. See 8 C.F.R. § 245a.2(d)(2). No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the

<sup>3</sup> The tax returns for 1983, 1985 and 1986 also state that the applicant has four dependent children, but the section which requests the children's names is obscured.

<sup>4</sup> The record contains a copy of the first page of the applicant's 2004 and 2005 federal income tax returns in which the applicant lists his wife's name as ██████████ and the names of his two dependent children's as ██████████ and ██████████. While outside of the requisite period, the inconsistency calls into question the applicant's continuous residence in the United States during the requisite period.

applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.