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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  
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FILE: [REDACTED]  
MSC 04 300 22671

Office: LOS ANGELES

Date: **SEP 16 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, Los Angeles. That decision is now before the Administrative Appeals Office 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that the applicant failed to provide verifiable evidence establishing his physical presence in the United States prior to January 1, 1982, and that affidavits submitted on the applicant's behalf contain inconsistencies.

On appeal, the applicant submits a brief and additional information and asks that his application be reconsidered.

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 245(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).

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).

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 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. The record contains the following evidence which is material to the applicant’s claim:

- The applicant submitted three affidavits in support of his application. The affidavits are general in nature with two of the affiants ( [REDACTED] and [REDACTED] ) stating that they witnessed the arrival of the applicant in the United States in December of 1981. The third affiant, [REDACTED], states that she has personal knowledge that the applicant has been living in the United States since prior to 1981.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits provided do not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts

during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavits must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

- The affiant submitted a copy of a ticket stub for an event sponsored by CharisMISSIONS which was held at the Shrine Auditorium in Los Angeles, California beginning June 29, 1984. The record contains no information about the ticket or how it is relevant to the applicant or the applicant's case. The document is, therefore, not deemed probative.
- The applicant provided a Social Security Administration earnings record dated April 26, 2005 which indicates that the applicant was employed and earned wages in the United States in 1986 and 1987.
- The record contains copies of letters/cards which are written in Spanish and have not been translated for the record. Those documents are, therefore, of no probative value.
- The record contains an x-ray report for tuberculosis dated January 17, 1980 from the County of Los Angeles Department of Health Services. The report does not, however, state that it is any way related to the applicant. It is, therefore, of no probative value.
- The applicant provided a record from Eastmont Intermediate School in Los Angeles, California which indicates that the applicant attended school there in the 1982 – 83 school year.
- The applicant provided a photocopy of a letter signed by [REDACTED] of St. Joseph School in Hawthorne, California, which states that the applicant (fourth grade) "passed the test taken for St. Joseph School and is on a waiting list." The letter is dated May, 1984.
- The applicant provided copies of envelopes/cards addressed to, or from him, in the United States, which bear postmark dates for the following years: 1985; 1986; 1987; and 1988. Other envelope copies were submitted but do not have legible post mark dates.

One envelope is postmarked May 14, 1987 and addressed to the applicant at [REDACTED]. The applicant does not list this address as a residence address on the Form I-687

One envelope is postmarked July 11, 1985 and addressed to the applicant at [REDACTED]. According to the information provide by the applicant on the Form I-687, he lived at [REDACTED] from November of 1984 until March of 1987.

One envelope is postmarked November 10, 1987 bearing a return address for the applicant of [REDACTED]. According to information provided by the applicant on the Form I-687, the applicant lived at [REDACTED] from October of 1987 until April of 1988.

The inconsistencies noted with the referenced envelopes are material to the applicant's claim as they have a direct bearing on the applicant's activities and whereabouts during the referenced 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support. The inconsistencies have not been explained in the record and it cannot be determined from the record where the truth actually lies with regard to the applicant's residences during the requisite period.

The only other evidence submitted by the applicant in support of his application is his own statement. The applicant's statement, however, in the absence of other probative and relevant proof establishing the applicant's residence during the requisite period, will not sustain his claim. As previously noted, in order 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 absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite, and the inconsistencies noted above, seriously detract from the credibility of his claim. 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 amenability to verification. Given the applicant's reliance upon documents with minimal probative value, and the inconsistencies noted, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

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.

On or about November 19, 1995, the applicant was charged with having committed the misdemeanor offense of *Disorderly Conduct: Lewd Act*. (Count One) in Los Angeles County, California. The criminal complaint was later amended to add the misdemeanor offense of *Disturbing the Peace* as Count Two of the criminal complaint against the applicant. The applicant subsequently entered a plea of guilty to Count Two – *Disturbing the Peace* and was ordered to pay a fine and applicable assessments. Count One of the criminal complaint, *Disorderly Conduct: Lewd Act*, was dismissed by the court. The record reflects that the applicant ultimately paid all fines and assessments in full. ( )

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