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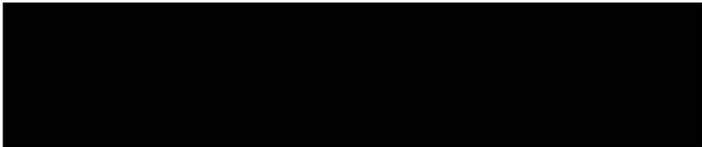
FILE: [REDACTED] Office: DALLAS
MSC-06 062 18660
MSC-08 023 12435 – APPEAL

Date: **SEP 22 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:



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 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 January 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 December 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 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 additional affidavits from individuals attesting to the applicant continuous residence in the United States during the 1980s.

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 letters of employment from alleged former employers, and a series of affidavits from acquaintances who claim to have resided with or otherwise known the applicant the applicant resided in the United States through the requisite period.

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 more than one Form I-687 and that he provided contradictory statements on the forms that call into question the veracity of his claim that he entered the United States in 1981 and resided continuously in the country through the requisite period. On the Form I-687 completed on August 9, 1993, the applicant provided the following employment information in the United States during the requisite period:

- [REDACTED], handy man, from March 1981 to January 1989;
- Mayco, Inc., Dallas, Texas, labor, from 1987 to 1987; and
- Nature Chem International, Sanitation, since 1992.

On the Form I-687 he filed December 2005, the applicant provided the following employment information in the United States during the requisite period:

- Dallas, Texas, plumber, from March 1981 to November 1987;
- Canyon Creek, Richardson, Texas, maintenance, from 1981 to 1986; and
- Michael Inc., Farmers Branch, Texas, machinery operator, from 1987 to February 1992.

The applicant submitted employment letters signed by two different individuals stating that the applicant was employed at Canyon Creek Country Club from 1981 to 1983. The applicant also submitted affidavits by [REDACTED] Plumbing Company attesting that the applicant was employed since 1981. The affidavit sworn to by [REDACTED] on May 19, 1990, attest that the applicant was employed since March 1981, and the affidavit [REDACTED] swore to on February 16, 2003, attests that the applicant was employed from June 1980 to 2003.

The contradictory statements and documents discussed above, regarding the applicant's entry into the United States, his employment information and his continuous residence in the country, call into question 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. *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. *See id.*

The record includes letters and affidavit of employment from alleged former employers – Canyon Creek Country Club and [REDACTED] Plumbing Company. The letters from Canyon Creek Country Club were signed by [REDACTED] Golf Course Superintendent on August 14, 2003, stating that the applicant was employed from February 1981 to October 1983 to work in the Golf Course Maintenance Department, and by [REDACTED], Golf Course Superintendent on June 13, 1990, stating that the applicant was employed since 1981 to work on the golf course. Neither [REDACTED] nor [REDACTED] provided specific details of the applicant's duties and responsibilities. The affidavit sworn to by [REDACTED] on May 29, 1990, attests that the applicant was employed as a plumber's helper since March 10, 1981, and the affidavit sworn to by [REDACTED] on February 16, 2003, attests that the applicant was employed as a plumber's helper from June 1980 to 2003.

The letters and affidavits of employment 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 letters and affidavits 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 letters and affidavits are contradictory to the information provided by the applicant on the Forms I-687 he completed in 1993 and 2005. Also, 2003 affidavit by Mr. [REDACTED] attests to the applicant's employment from 1980 when the applicant was not even residing in the United States. As previously stated, 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 all the reasons discussed above, the employment letters and affidavits have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States in an unlawful status for the duration of the requisite period.

As discussed above, the applicant has provided conflicting information 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 primarily of – affidavits from individuals who claim to have resided with, worked with or otherwise known the applicant in the United States during the 1980s, – is suspect and not credible. None of the affiants have first hand knowledge about the circumstances of the applicant's residence in the United States. None provided documents to establish their residence in the United States during the 1980s, and none provided documents – such as photographs, letters or the like – demonstrating the affiants' personal relationships with the applicant in the United States during the years. Thus, the affidavits have 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.