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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

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

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FILE: [Redacted]
MSC 05 015 10064

Office: LOS ANGELES

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, Los Angeles. The matter was then appealed to the Administrative Appeals Office (AAO) who rejected the appeal as being untimely filed. Specifically, the record indicated that the appeal was filed on July 6, 2006, 35 days after the director issued her decision on June 1, 2006. The appeal was, therefore, deemed untimely. Subsequent to the AAO's rejection of the appeal, counsel submitted documentation which establishes that the appeal was received by United States Citizenship and Immigration Services (USCIS) on July 3, 2006, not July 6, 2006 as noted by the AAO in its decision rejecting the appeal.¹ The appeal was, therefore, timely filed. The AAO does hereby reopen these proceedings sua sponte, and a decision shall be rendered on the merits of the applicant's 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 discrepancies in the evidence concerning the applicant's residence and employment during the requisite period, and found the evidence submitted by the applicant to not be credible.

On appeal, counsel submitted a brief stating that evidence of record establishes the applicant's eligibility for the immigration benefit sought.

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).

¹ The Form I-694 initiating the present appeal bears a receipt time stamp date of July 6, 2006. Counsel has submitted Fed Ex tracking documentation for the appeal which establishes that the appeal was received by USCIS on July 3, 2006, not July 6, 2006.

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:

- A handwritten receipt in the applicant's name dated August 20, 1988 for the purchase of auto parts from Don Lee Auto Sales - the authenticity of the receipt is not subject to verification;
- A handwritten merchandise receipt in the applicant's name dated February 2, 1985 from McFadden-Dale Hardware – the authenticity of the receipt is not subject to verification;
- A receipt in the applicant's name from Green-Gro Landscaping. The receipt is a printed receipt dated August 15, 1984 with a handwritten notation: "Paid Cash by [REDACTED] - 8/15/84" - the authenticity of the receipt is not subject to verification;
- The following United States Postal Service registered mail receipts:

Receipts post marked January 12, 1987 and March 2, 1987 from [REDACTED], addressed to the applicant's mother in Mexico. The authenticity of this document cannot be verified. Further, the return address listed for the applicant on the receipt is not a residence address listed by the applicant on the Form I-687.

A receipt post marked July 21, 1986 from [REDACTED] California, addressed to the applicant's mother in Mexico. The authenticity of this document cannot be verified. Further, the return address listed for the applicant on the receipt is not a residence address listed by the applicant on the Form I-687.

- The applicant submitted copies of the following envelopes bearing legible postmark dates:

An envelope bearing a postmark date of February 28, 1983, noting the applicant's return address of [REDACTED] addressed to the applicant's mother in Mexico;

An envelope bearing a postmark date of March 30, 1982, noting the applicant's return address of [REDACTED], addressed to the applicant's mother in Mexico;

An envelope bearing a postmark date of August 11, 1981, noting the applicant's return address of [REDACTED], addressed to the applicant's mother in Mexico;

An envelope bearing a postmark date of September 15, 1980, noting the applicant's return address of [REDACTED] addressed to the applicant's mother in Mexico;

An envelope bearing a postmark date of May 24, 1979, noting the applicant's return address of [REDACTED], addressed to the applicant's mother in Mexico;

- [REDACTED] of Orange County Metal Processing, submitted a letter dated March 21, 2001, wherein he stated that the applicant worked for his company beginning in 1978. An immigration officer contacted [REDACTED] in an attempt to verify the employment

information submitted. During the January 19, 2006 verification telephone call, [REDACTED] informed the immigration officer that the applicant had worked “off and on” for him since approximately 1990. When asked by the immigration officer if the applicant had worked for him in the 1980s, [REDACTED] replied “no.”

When confronted with this discrepancy in a Notice Of Intent To Deny (NOID), the applicant submitted a second letter from [REDACTED] dated February 2, 2006. In this letter, Mr. [REDACTED] stated that the applicant had, in fact, been working for him “off and on” since 1978, but only began working “with seniority since 1990.” [REDACTED] states that the applicant worked for him from 1978 – 1990 under the name of [REDACTED] (the applicant’s father). As a result, [REDACTED] has no employment records of the applicant having worked for him until 1990 when the applicant began working under his own name.

The applicant submitted a notarized statement in response to the NOID wherein he attempted to explain the contradictions noted above. The applicant stated that when he arrived in the United States in 1978, his father had been working under a valid social security number. The applicant states that his father then returned to Mexico and the applicant used his social security number to obtain employment with Orange County Metal Processing. The applicant states that although taxes were filed under his father’s name (listing the applicant and other siblings as dependents), it was he who was actually working for Orange County Metal Processing, earning the wages and filing the tax returns. The applicant admits that he filed false tax returns in the name of his father throughout the 1980s (and claiming dependents as deductions who were not entitled to dependent deduction status). The applicant did not disclose on the Form I-687 that he had used another name while in the United States.

The employment statements of [REDACTED] lack probative value and are not deemed credible because of the contradictory information provided by [REDACTED] in his written statements and to the USCIS immigration officer who was attempting to verify the employment information provided. Further, the written statement submitted by the applicant in an attempt to explain the noted discrepancies brings into question the validity of all evidence submitted by the applicant in support of his application. The applicant admitted filing false tax returns in the name of his mother and father for work he allegedly performed, and further admitted that he claimed tax deductions on individuals who were not eligible dependents. These inconsistencies are material to the applicant’s claim in that they have a direct bearing on the applicant’s activities and whereabouts during the requisite period. It cannot be determined from the evidence of record where the truth actually lies. 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 of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies and admitted fraudulent filing of tax returns by the applicant, seriously detracts 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 and fraudulent filing of tax returns noted above, 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.

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