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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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 3 1 2010

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:

[redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed a Form I-687, Application for Status as a Temporary Resident. The Director, Los Angeles, denied the application. The applicant appealed the decision to the Legalization Appeals Unit (now the Administrative Appeals Office). The Administrative Appeals Office (AAO) issued a Notice of Intent to Deny (NOID) on October 14, 2009 requesting further information and noting that the applicant was ineligible for temporary residence due to his criminal history and his inadmissibility. The applicant was afforded 33 days to respond to the NOID. The applicant submitted a timely response, however, the AAO noted that several issues remained outstanding and issued a second NOID on February 27, 2010. The applicant again filed a timely response. The appeal will be dismissed.

Specifically, the record reflects that the Director denied the application because the applicant was arrested and charged with one count of L&L W/Child Under 14 on January 8, 1986, by the Los Angeles Police Department The AAO noted in the NOID that the applicant had not submitted final court dispositions regarding this arrest and that the documents that were submitted were not certified and did not state a final disposition.

In the NOID, the AAO noted that the statutory language at section 245A(b)(1)(C) of the Act provides that the alien "*must establish* that he is (i) is admissible...and (2) *has not been convicted* of any felony or 3 or more misdemeanors." Accordingly, a letter indicating that the required evidence is unavailable, regardless of who wrote the letter or the reasons for unavailability, does not establish that the alien "has not been convicted" of the offenses in question. In order to prevail on this issue the applicant must submit secondary evidence consisting of affidavits from individuals who have direct knowledge of the arrests and the dispositions of those arrests.

In response to the NOID issued on February 27, 2010, the applicant submits a letter from the Los Angeles Police Department indicating that the applicant was released by the prosecutor and that no case was filed in Los Angeles County. The applicant also submits a letter from the State of California, Department of Justice, Bureau of Criminal Identification and Information, indicating that the applicant's fingerprints did not identify with any criminal history record maintained by the State. Thus, the applicant has established that he has not been convicted for immigration purposes.

However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In this case, the AAO finds that the applicant has failed to submit sufficient evidence of his continuous residence in the United States for the duration of the relevant period.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 throughout the relevant period.

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 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 several affidavits and letters. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record of proceedings includes a letter from indicating that the applicant was employed by the company from 1980 until 1985. This letter is accompanied by a Social Security Administration (SSA) letter indicating that the applicant earned taxable wages from from 1980 until 1985. The social security number used is However, a letter from Human Resources Manager indicates that the applicant was employed under the Social Security number

The applicant also submits several income tax return documents relating to the years 1980 until 1985. The documents are consistent with the information provided by the applicant on his current Form I-687 and his previously filed Form I-687 dated 1990, however, the applicant does not list the social security number on his Form I-687 dated December 30, 2005. 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 applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The applicant has also failed to submit credible relevant evidence of his continuous residence in the United States from 1985 through the end of the relevant period.

The applicant submits a letter from indicating that the company employed the applicant in August through October 1986 and then again beginning in April 1988 The letter indicates that the applicant worked under the name The affiant indicates that the applicant requested that his name be changed to in June 1990.

In the NOID issued on February 27, 2010, the AAO noted that the applicant failed to establish that the alias noted actually belonged to him. The applicant has the burden of proving that he was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2). To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is "a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2).

The applicant submits a letter from indicating that the applicant worked under the name using the Social Security number The applicant does not submit any other evidence of the assumed name. It is noted that the applicant listed both social security numbers on his Form I-687 dated March 22, 1990 along with his assumed name – However, on his I-687 dated December 30, 2005 he lists no alias.

The AAO notes that on his Form I-687, the applicant indicates that he was employed by from August 1986 until October 1986 and then again in April 1988. He lists employment with Water Jet Company from November 1986 until February 1988. He has not submitted any evidence of his employment with Water Jet Company. Additionally, his Social Security earnings statements indicate that he earned nominal wages in 1986 and no wages in 1987. The only evidence of the applicant's residence in the United States between 1986 and 1987 consists of affidavits.

The affidavits contained in the record are provided by: Although the affiants state that they met the applicant during the relevant period, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, most affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the *entire* requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. Specifically, the applicant has failed to establish his continuous residence for the period 1986-1987.

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 entire 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.