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

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[redacted]

FILE: [redacted] Office: HOUSTON Date: JAN 28 2010

MSC 05 319 10036

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, Houston, Texas. The decision 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, on August 15, 2005. The director denied the application on August 15, 2007, because 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. The applicant, through counsel, filed a timely appeal from the director's decision on September 16, 2007. On appeal, counsel for the applicant submits a brief and additional documentation.

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).

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).

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.

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 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.

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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The AAO maintains plenary power to review this matter 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 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he resided in the United States in an unlawful status throughout the requisite time period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID) the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, dated February 2, 2005, the director determined that the applicant had failed to submit evidence demonstrating his entry before January 1, 1982, and continuous unlawful residence in the United States throughout the requisite period. The director noted that the applicant stated his first departure from the United States was in July 1987 to Mexico, and that he reentered the United States two weeks later without inspection. The applicant also stated that he had not departed the United States since 1987 until September 1998. However, the director noted that the applicant indicated that he had three children born in Mexico in 1985, 1989 and 1999. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID of the Form I-485, counsel attempted to resolve the noted discrepancies in the record. Counsel asserted that during the applicant's interview, the applicant disclosed four absences from the United States in 1984, 1987, 1988 and 1989. In the Notice of Decision (NOD) dated March 30, 2005, the director determined that counsel failed to overcome the reasons stated in the NOID and denied the Form I-485.

The record contains a list of the applicant's absences. The applicant has indicated that he was absent from the United States for about one month in June 1984 and July 1987. The applicant has also listed three other absences that fall outside the requisite period.

The record contains a sworn affidavit by dated September 2, 1990. The affiant stated that the applicant left the United States on July 14, 1987, to visit his family and returned to Houston on July 28, 1987. The affiant provided her address of residence.

The record also contains a marriage contract by the Government of the State of Guanajuato, Mexico. The contract indicates that the applicant married on February 27, 1984. However, the applicant failed to indicate he was absent from the United States in February 1984.

It is also noted that the applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on June 3, 1990. On this Form I-687, the applicant indicated only one absence from the United States in July 1987.

The applicant filed the current Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, on August 15, 2005. On this application, the applicant listed his absences in June 1984 and July 1987. However, he failed to list any absence in February 1984 for his marriage to in Mexico. The discrepancies regarding his absences from the United States brings into question the credibility of the applicant.

The record also contains five envelopes addressed to the applicant at . The applicant claimed the envelopes were postmarked in 1981, 1982 and 1984; however, the stamps and postmarks have been torn off. On appeal of the Form I-485, counsel asserted that the envelopes were received by the applicant that way and the applicant accepted them as such. The AAO does not find this explanation credible.

The record also contains a sworn affidavit by dated April 30, 1990. The affiant stated that the applicant worked for him from March 1981 to November 1989 at his company located at The affiant provided his telephone number. failed to provide the applicant's address at the time of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record contains numerous rent receipts in the applicant's name, dated in 1982, 1983, 1984, 1985, 1986, 1987, 1988. The receipts indicate that the applicant resided at The receipts are signed by

The record contains a State of Texas identification card in the applicant's name and with his photograph. The identification card indicates the applicant's address was There is no issuance date on the identification card.

The record contains a Houston Soccer Association identification card in the applicant's name and with his photograph. The identification card indicates that the date of registration was May 11, 1980. The card indicates the applicant's address as in Houston, Texas.

The record contains a Host Airport Hotels employee card in the applicant's name, issued on October 24, 1978. The applicant never indicated that he worked for Host Airport Hotels on either of his Form I-687s. The card does not indicate where the applicant resided at the time.

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). The record contains no independent objective evidence to explain the above discrepancies.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. The applicant has been given an opportunity to resolve the noted discrepancies, but has failed to resolve the discrepancies regarding his absences and has failed to submit a credible explanation regarding the torn envelopes. As such, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence until the date of filing his Form I-687.

Beyond the decision of the director, the record reflects that on October 21, 1991, the applicant was charged with *driving while intoxicated* in the District Court of Harris County, Texas. On January 8, 1992, the applicant was convicted of *driving while intoxicated*, in violation of section 49.04 of the Texas Penal Code, a misdemeanor (Cause 914301701010). The applicant was given a deferred adjudication of guilt and ordered to perform 72 hours of community supervision. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United

States from prior to January 1, 1982, through the date he attempted to file a Form I-687 application 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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