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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-132-10925

Office: LOS ANGELES

Date:

MAR 23 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:



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.

Elizabeth McCormack

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, Los Angeles. 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 (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. The director noted that the record showed that the applicant was absent from the United States from November 15, 1982 to December 23, 1982; January 2, 1983 to October 12, 1983; and from March 27, 1984 to May 13, 1984, and that such absences exceeded the forty-five (45) days allowed for any single trip outside the United States. The director further noted that the applicant testified during his immigration interview that he could have initially entered the United States in 1982. The director noted the inconsistencies regarding the applicant's employment history and the discrepancies concerning the applicant's social security number. 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.

On appeal, the applicant asserts that the director's decision was arbitrary, capricious, and an abuse of discretion. The applicant also asserts that the evidence submitted is sufficient to establish his eligibility for the immigration benefit sought. The applicant admits that he was absent from the United States, but asserts that such absence was caused by extenuating circumstances. The applicant requested a copy of the record of proceedings through the Freedom of Information Act (FOIA) and the request was satisfied on June 9, 2009 (NRC2009022918). The applicant does not submit any evidence on appeal.

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. See 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).

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 applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted photocopies of an automobile insurance application where he indicated that he first received a driver's license in the State of California on May 1, 1983; and a Request for a Social Security Number dated October 17, 1983. The applicant also submitted as evidence copies of individual tax returns, Forms W-2 and 1099, insurance statements, an insurance license, immigration documents, rent/lease application, and Department of Motor Vehicle California Driver's Licenses dated from 1984. This evidence demonstrates the applicant's presence in the United States since 1983, barring any extended absences but, is insufficient to demonstrate his entry into the United States prior to January 1, 1982 or his continuous residence throughout the requisite period.

On appeal, the applicant asserts that his extended absences from the United States were due to extenuating circumstances. The applicant fails to specify the nature of his extenuating circumstance and when and where it took place. Absent records or other documentation of the claimed circumstance, the applicant's claim of an emergent reason for his delayed return to the United States has not been sustained. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless timely return could not be accomplished due to emergent reasons. 8 C.F.R. 245a.2(h)(1)(i). In light of the applicant's admission that he was absent from the United States, and his failure to provide documentary or other evidence that his return was delayed due to emergent reasons, any continuous unlawful residence he may have had in the United States during the requisite period has been broken. Due to his absence, the applicant has failed to demonstrate continuous unlawful residence in the United States for the requisite period.

The applicant submitted the following evidence:

- A copy of a Pre-Computed (add-on) Interest Motor Vehicle Contract and Security Agreement dated May 27, 1981 containing the applicant's social security number that was not issued to him until 1983.
- Affidavits from [REDACTED] and [REDACTED] who stated that the applicant resided at [REDACTED] in Pasadena, California from February 14, 1980 through December 30, 1981.

- An affidavit from [REDACTED] who stated that the applicant resided at [REDACTED] in Los Angeles, California from January 1, 1982 through October 15, 1983.
- An affidavit from [REDACTED] who stated that the applicant resided at [REDACTED] in Los Angeles, California from October 16, 1983 through June 30, 1984.
- An affidavit from [REDACTED] who stated that the applicant resided at [REDACTED] in San Gabriel, California from July 1984 through January 1986.
- An affidavit from [REDACTED] who stated that the applicant resided at [REDACTED] in Glendora, California from January 1986 through July 1986.
- An affidavit from [REDACTED] who stated that she has known the applicant and his family to reside at [REDACTED] in Glendora, California from July 1986 through May 1989 because she was the real estate agent who sold the property to the applicant.

The affidavits are insufficient to demonstrate his residence in the United States prior to January 1, 1982, and throughout the requisite 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 residence in the United States. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted the following employment letters:

- Two letters from the general sales manager of Grand Chevrolet and the general sales manager of [REDACTED] who stated that the company employed the applicant as a salesman from March 1981 through December 1988. This statement is inconsistent with the documentation submitted with the applicant's Form I-140 application where Grand

Chevrolet is listed as the applicant's employer from June 1984 through May 1985. The statements are also inconsistent with the applicant's employment application to the Motor Car Dealers Association of Southern California date June 25, 1984, where he stated that he was employed in the Philippines selling Toyota cars until November 1985.

- A letter from the president of Grand Wilshire Leasing who stated that the company employed the applicant as a salesman from June 1984 through March 1985. This statement is inconsistent with the applicant's previous and current Form I-687 applications where he did not list the company as his employer.
- A letter dated December 28, 1989 from the general sales manager of [REDACTED] who stated that the company has employed the applicant since 1988. The declarant fails to specify the applicant's dates of employment.

The employment letters do not conform to regulatory standards for attestations by employers. Specifically, the letters do not specify the address(es) where the applicant resided throughout the claimed employment period, or any layoff periods. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States. The applicant has failed to overcome the director's basis for denial or to address the many inconsistencies found in the record. The inconsistencies and contradictions found in the record cast doubt on the applicant's proof. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 this 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 evidence that is contradictory and is lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. It is also noted that the applicant has failed to demonstrate that due to emergent reasons, he was unable to return to the United States within the 45 days allowed for any single visit. 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.