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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date:

NOV 24 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 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, or *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 of the Houston office and 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 (LULAC) Class Membership Worksheet. 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 for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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).

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).

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has establish 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 witness statements. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted witness statements from [REDACTED]

[REDACTED] (the applicant's cousin), [REDACTED]

The statements are general in nature and state that the witnesses have

knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide 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 in the United States during the requisite period. 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance the witnesses do not state how they date their initial meeting with the applicant in the United States or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [REDACTED] states that the applicant resided with her from September 1981 to December 1984 on [REDACTED]. However, the testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, in which the applicant states that he resided in Harlingen, Texas for the same period. Further, in a statement dated 1998, [REDACTED] states that she has known the applicant for 12 years, or since 1986, at which time she states the applicant was residing at [REDACTED] in Houston. However, the testimony of the witness is inconsistent with the testimony of the applicant in the instant I-687 application, and in an I-687 application filed in 1990, in which the applicant states that he began residing at this address in July 1988, after the requisite statutory period. Due to these inconsistencies, these witness statements will be given no weight.

In addition, the applicant submitted employment verification letters from [REDACTED] in Houston.

In two employment verification letters, [REDACTED] states that the applicant was employed with Garcia Floors from January 1984 to February 1986 as a carpet installer.

In two employment verification letters, [REDACTED] states that the applicant worked for Mando Construction from February 1986 through the end of the requisite period as a construction worker.

The employment verification letters of [REDACTED] do not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where

records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties, the number of hours or days he was employed, the location at which he was employed, or his residence address at the time of his employment. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these additional reasons, the employment verification letters are of little probative value.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in 1990 to establish the applicant's CSS class membership and a Form I-485 application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his residences in the United States and the date of his absences from the United States during the requisite statutory period.

In the initial I-687 application, filed in 1990, and in a class member worksheet filed contemporaneously with the application, the applicant stated that he did not have any absences from the United States since the date of his entry into the United States on September 15, 1981. The applicant listed his residence address from September 1981 to December 1984 as Route 6, Box 142-F in Mission, Texas.

In the instant I-687 application, the applicant listed one absence from the United States during the requisite period, from July, 1987 to August 1987. The applicant listed his residence address from September 1981 to December 1984 as being in Harlingen, Texas.

In a statement dated May 20, 1997, when the applicant was in the custody of the Houston County Sheriff's Office, the applicant stated that he last entered the United States in February 1985.

These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period. The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates he resided at a particular location in the United States, as well as his absences from the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the

credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative. Therefore, 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. The applicant is, therefore, ineligible for temporary resident status on this basis.

The record reflects that on May 20, 1997, the applicant was charged with one felony count of violating section 37.10 of the Texas Penal Code (PC), *Tampering with Governmental Record*. On November 11, 1997, the court reduced the charge to a Class A misdemeanor, and applicant pleaded guilty to the charge. Also on that date, the court ordered the applicant to serve two years probation and pay a fine, and the case was deferred. On November 17, 1999, upon the applicant's successful completion of the terms of his probation, the case was dismissed. (District Court of Harris County, Texas, case number 753348).

The AAO finds that the applicant's conviction for *Tampering with Governmental Record* is a conviction for a crime involving moral turpitude (CIMT). In general, crimes involving fraud, deceit, and theft are considered to be crimes involving moral turpitude. While crimes that have a specific intent to defraud as an element have always been found to involve moral turpitude, certain crimes have been found to be inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud. See *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980)(Georgia), *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993), (Alabama Criminal Code), and *Balogun v. Ashcroft*, 270 F. 3d 274 (5th Cir. 2001), (forgery is a CIMT); *Morales-Carrera v. Ashcroft*, 74 F3d. Appx. 324 (5th Cir. 2003), held that a conviction for forging proof of financial responsibility under the Texas Transportation Code, section 601.196, was a CIMT as the offense involved forgery and was fraudulent in nature. An applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. See Immigration and Nationality Act, (Act), as amended, § 212(a)(2)(A)(i)(I). However, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception, which requires that the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year, and that the alien was not sentenced to a term of imprisonment in excess of 6 months. 8 U.S.C. § 1182(a)(2)(A)(ii). The AAO finds that the applicant's misdemeanor conviction qualifies for the petty offense exception. The maximum possible penalty for a Class A misdemeanor in Texas is one year. See Texas Penal Code § 12.21. In addition, the applicant was not sentenced to a term of imprisonment in excess of six months, but was placed on probation. Therefore, although the applicant's misdemeanor is a CIMT, it is not additional grounds for denial of this application.

The record also reveals that on or about May 24, 1997, removal proceedings were instituted against the applicant as an alien present in the United States without having been admitted, pursuant to the

Immigration and Nationality Act (Act), as amended, section 212(a)(6)(A)(i). On April 10, 1998, the Immigration Judge ordered the applicant to be removed should he not voluntarily depart by August 8, 1998, which date was subsequently extended to October 20, 1998. A Form I-205, warrant of removal/deportation was issued on September 17, 1998 which remains outstanding.

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 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.

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