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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: LOS ANGELES

Date: SEP 29 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, the applicant asserts that the director's decision is erroneous because the evidence which he 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 period. Counsel has submitted an additional statement from the applicant on appeal.¹ Counsel also requests that the applicant be permitted to file a Form I-601, application for waiver of grounds of inadmissibility.² The applicant does not need permission file an application for a waiver. The entire record was reviewed and considered in rendering this decision.³

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 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

¹ The record reflects that the applicant's FOIA request, number [REDACTED] was processed on March 15, 2010. The record also reflects that the applicant's FOIA request, number [REDACTED], was processed on September 21, 2004.

² Although counsel refers to the applicable waiver application as a Form I-601, the applicable waiver application for legalization cases is a Form I-690.

³ The 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).

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 overcome the inconsistencies in the record and established his eligibility for temporary resident status. As stated, the applicant must 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 and documents. The AAO has reviewed the documents in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. 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 record contains witness statements from the following witnesses: A

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 statements must do more than simply state that a witness 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 witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses 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, states that he has known the applicant since 1979. However, the testimony of this witness is inconsistent with the testimony of the applicant at the time of his interview on February 15, 2008, at which time the applicant stated that he met the witness in 1998. Due to this inconsistency, the testimony of this witness will be given no weight.

states that he personally knows that the applicant has been living in the United States since 1975. However, also states that he has only known the applicant since approximately 2000. Therefore, the witness could not have first-hand knowledge of the applicant's residence in the United States during the requisite period. Due to this inconsistency, the testimony of this witness will be given no weight.

states that he has known the applicant since 1979, "when he was working on the corners . . . but also he has worked in factories . . ." However, the testimony of this witness is inconsistent with the testimony of the applicant in the I-687, in which the applicant states that he worked for as a carpenter from February 1979 to January 1984. Further, at the time of his interview, the applicant stated that he worked for either in 1983 or after the

requisite period. The overlapping dates are incongruous. There are contradictions as to when and where the applicant was employed. The witness also states that the applicant was living in Inglewood from 1984 for the duration of the requisite period. However, the witness's testimony is inconsistent with the testimony of the applicant in the I-687, in which the applicant states that he resided in Inglewood after the requisite period. Due to these inconsistencies, the testimony of this witness will be given no weight.

states that the applicant resided on from February 1980 until January 1984. However, in the I-687 application, the applicant states that he lived at this address from November 1980 to March 1983. Due to this inconsistency, the testimony of this witness has minimal probative value.

The applicant has submitted a copy of a student identification card dated 1978 to 1979 for a school in Los Angeles. The applicant has submitted copies of three stamped envelopes sent by him from the United States to Mexico, with postmarks dated April 9, May 6, and May 28, 1979, respectively. These documents are some evidence of the applicant's residence in the United States for some part of 1978 and 1979.

The applicant has also submitted copies of two photographs which are labeled as having been taken in 1978 and 1980 in Los Angeles. However, the persons in the photographs have not been identified by name, and the location of the photographs cannot be determined. Therefore, the photographs will be given no weight.

The record contains a copy of a student identification card dated 1983 to 1984. The record contains a copy of an Eastern Airline itinerary and airline ticket dated November 16, 1983. The applicant has submitted a copy of a Western Union mailgram dated December 1, 1983. The record also contains a copy of a Los Angeles Public Library card dated March 20, 1984. The applicant has also submitted copies of three stamped envelopes sent by him from the United States to Mexico, with postmarks dated January 7, January 23 and February 22, 1984. These documents are some evidence of the applicant's residence in the United States for some part of 1983 and 1984.

The applicant has submitted a copy of a Los Angeles Public Library card dated February 11, 1987. However, the document lists the applicant's address as . This document is inconsistent with the information provided by the applicant in the I-687 application, in which the applicant states that from March 1984 through the end of the requisite period he was residing at . Due to this inconsistency, this document will be given no weight.

The applicant has also submitted 35 documents, with dates of 1979, 1983 or 1984, in the names of . The applicant asserts that these were his aliases. The AAO finds that the applicant has not established he used an assumed name or alias. The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

(2) *Assumed names* - (i) *General*. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. . . .The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity*. 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 affidavit(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. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

The documents which the applicant submits in the name of [REDACTED] or [REDACTED] fail to establish these names as aliases or assumed names because they do not comply with the above cited regulation. For instance, the applicant has not submitted any documents issued in either assumed name which identify the applicant by photograph, fingerprint or detailed physical description. Further, the applicant has not submitted a statement of any witness with knowledge of the applicant's use of the assumed names. For these reasons, the applicant has failed to establish that he used the name [REDACTED] as assumed names or aliases, and any documents in those names will be given no weight.

The record contains a copy of a bill from the Los Angeles County USC Medical Center dated January 23, 1988. This document is some evidence of the applicant's residence in the United States for some part of 1988.

The record contains a copy of the birth certificates of the applicant's three children, signed by the applicant at the time they were registered in Mexico on August 26, 1978, August 21, 1980 and October 10, 1985, respectively.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application and a Form I-698, application to adjust status from temporary to permanent resident.⁴ The record contains inconsistencies regarding the dates of the applicant's absences from the United States.

In the I-687 application, the applicant lists residences in the United States from 1975 through the end of the requisite period and employment in the United States from January 1979 through the end

⁴ The applicant's I-698 application has been administratively closed.

of the requisite period. The applicant lists one absence from the United States during the requisite period, in October 1983.

In a statement dated October 24, 1997, the applicant stated that he arrived in the United States in 1979.

At the time of his interview on February 15, 1988, the applicant testified that he had one absence from the United States during the requisite statutory period, in 1983. The applicant also testified that his spouse came to the United States twice, in 1979 when he met her at the border, and for 3 days in 1983, respectively. Although the applicant testified that he was not with his wife from 1975 to 1979, from 1979 to 1983 and from 1983 for the duration of the requisite period, the applicant could not explain how his children were conceived.

The director of the Los Angeles office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant asserted that his spouse came to the United States three times, during which his children were conceived. The applicant also stated that his brother signed the applicant's name on the birth certificates of his children when they were registered in Mexico.

On appeal, the applicant recants his prior testimony and admits that he was present in Mexico for the registration of the births of two of his three children, registered on August 21, 1980 and October 10, 1985, respectively.⁵ On appeal, counsel for the applicant states that the applicant misrepresented these absences based upon ill-advised counsel of a preparer.

The applicant has failed to provide sufficient probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates of the applicant's 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. Evidence of record does not resolve all of 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,

⁵ The applicant has not stated whether or not he signed the Mexican birth certificate of his child registered on August 26, 1978.

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.

The record reveals that on October 16, 1997, the Immigration and Naturalization Border Patrol detained the applicant, and on October 17, 1997, removal proceedings were instituted against him. On October 29, 1997, the applicant was given until October 29, 1997 to voluntarily depart the United States, at which time he departed to Mexico.

The AAO also finds that the applicant has admitted attempting to procure an immigration benefit by fraud, or by willfully misrepresenting a material fact, by asserting in the I-687 application, at the time of his interview, and in rebuttal to the NOIT that he did not sign his children's birth certificates when they were registered in Mexico in 1978, 1980 and 1985, respectively. Any alien who, by fraud or willful misrepresentation of a material fact, seeks to procure (or has sought to procure, or has procured) a visa, or other documentation, or admission into the United States or other immigration benefit, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i) permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 C.F.R. § 245a.2(k)(2). Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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 on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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