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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: [redacted] Date: APR 07 2011

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 office that originally decided your case. If your appeal was sustained, or if your case 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.

Elizabeth M'Cormack

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 District Director, [redacted] 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 application was approved on July 24, 2007. Following the issuance of a Notice of Intent to Terminate (NOIT), the director terminated the application on June 11, 2010, 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, the applicant asserts that he has established his unlawful residence for the requisite time period. On the Form I-694, counsel argues that the director failed to consider the evidence submitted by the applicant. Counsel also mentions paragraphs 6 and 11 of the CSS/Newman Settlement Agreements but does not explain how these paragraphs relate to the applicant's case. Finally, counsel stated that he would submit a brief that would "thoroughly address all issues of law and fact" within 30 days. As of the date of this decision, the AAO has not received any additional evidence from counsel or the applicant. Therefore the record is complete.

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 245(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)(1) 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 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). To meet his or her burden of proof, 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. 8 C.F.R. § 245a.2(d)(6).

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 issue in this proceeding is whether the applicant (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 affidavits of relationship written by friends and an employer.

The affidavits from [redacted] all contain statements that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. 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.

All of the affidavits were signed and notarized on April 5, 2005 by the same notary, [redacted] However, all three affidavits state that the applicant lived in a different city in [redacted] during the requisite period. In his Form I-687, the petitioner states that he lived at [redacted] from November 1981 to December 1988. [redacted] states that the applicant lived in [redacted] from June 1985 to the present, [redacted] states that the applicant lived in [redacted] from February 1984 to the present, and [redacted] states that the applicant lived in [redacted] from 1986 to the present. [redacted] also stated that she was the applicant's neighbor for many years. The director noted these inconsistencies in his notice of intent to terminate (NOIT).

In response to the director's NOIT, the applicant submitted a statement dated June 1, 2010. The applicant stated that he had worked as a contract farm laborer in [redacted] from 1981 to 1988 and had lived at different locations during the "off-season." The applicant stated that the affiants assumed that he continued to live at the same address that he had when they met him. The applicant also stated that he attended high school with [redacted] at [redacted] High School, but did not provide the dates that he attended or submit any evidence of his attendance. The applicant did not explain how [redacted] was his neighbor for several years given that he moved so frequently.

None of the witness statements 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 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 record also contains two notarized employment letters on letterhead dated May 12, 2005 from by [redacted] president of [redacted] stating that the applicant worked for him as a farm laborer thinning, weeding, and harvesting tomatoes in the [redacted] from November 1981 to December 1988 for approximately 100 days each year. The AAO notes that the applicant could not have worked 100 days in 1981 since the letter states that he began working in November. [redacted] adds that the applicant's payroll records have been destroyed because they are "out dated." Further, as the director noted in his NOIT, one of the copies of these letters is notarized but not signed, indicating that the letter was notarized before it was signed. The applicant did not address the director's concerns regarding [redacted] inconsistent dates, or the fact that one of his letters was notarized but not signed in response to the NOIT or on appeal.

The affidavits presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions 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. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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 petitioner submits competent 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

In his NOIT, the director noted that the applicant was eleven years old in 1981 and that the applicant stated that his father left him alone after one year and the applicant was employed by [redacted] There is no evidence in the record of proceeding that the applicant addressed the director's concerns regarding his care and financial support as a minor during the requisite period.

On appeal, the counsel argues that the director did not consider all of the evidence, but does not address any of the director's concerns regarding the numerous inconsistencies in the record of proceeding. On appeal counsel also mentions paragraphs 6 and 11 of the CSS/Newman Settlement Agreements but does not explain how these paragraphs relate to the applicant's case. In his decision, the director stated that the applicant's class membership was not challenged by the NOIT and that his status was not terminated based upon "the fact that [the applicant] depended solely on affidavits to establish [his] continuous residence, but rather the lack of probative value and credibility of those affidavits."

There are many inconsistencies in the record of proceeding. These inconsistencies 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. As stated previously, 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. *See Matter of Ho, supra.* The applicant has failed to overcome the inconsistencies with independent objective evidence.

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 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.