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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: MAY 08 2012 OFFICE: NATIONAL BENEFITS CENTER FILE: [redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the National Benefits Center Director. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Mexico who claims to have resided in the United States since November 1980. He filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 6, 2006. The Form I-687 application was approved on October 13, 2006.

On July 13, 2011, the director terminated the applicant's temporary resident status after determining that the applicant had failed to establish the requisite continuous unlawful residence and continuous physical presence. The director noted that the applicant responded to a January 12, 2011 Notice of Intent to Terminate (NOIT), but failed to submit sufficient evidence to overcome the reasons stated in the NOIT. The director also noted that the applicant submitted several affidavits that lacked sufficient detail; that two of the affiants contradicted their earlier affidavits, and that the record lacked supporting documentation to establish the applicant's claim. The director determined, therefore, that the applicant was not eligible to adjust to temporary resident status under Section 245a of the Act.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his eligibility for temporary resident status. Counsel submits a statement from the applicant.

The AAO has 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 – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See s*ection 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. *See* 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. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

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[1]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).

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 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, 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application

period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The record includes several affidavits and letters from affiants attesting to the applicant's residence during the requisite period. The evidence provided, however, is questionable. The affiants make generalized statements about the applicant but do not provide details, such as how they date their acquaintance with the applicant or details of their relationship, such as how frequently and to what extent they had contact with the applicant since they met. Also, the record lacks documentation to support the attestations, such as evidence of the affiants residence in the United States during the periods they attest to the applicant's continuous residence.

Some of the affidavits contradict the applicant's applications. For example, [redacted] attests that he met the applicant in March 1985 when they lived on the same street [redacted] also attests to knowing the applicant to have departed the United States in February 1987 and in July 1987. However, on his Form I-687 applications, the applicant indicates a departure in July 1987, but does not indicate a departure in February 1987. Also, [redacted] attests that he met the applicant in April 1986 when the applicant came to work [redacted] However, on his Form(s) I-687 the applicant indicates that he was employed as a Landscaper at [redacted] from May 1991 and he submitted a letter of employment confirming that his employment at [redacted] began in May 1991.

As another example, [redacted] attests in his July 6, 2001 affidavit to having known the applicant to have resided in the United States since 1981. [redacted] also attests that the applicant worked for him since 1981. On his Form I-687 application the applicant indicates that he was employed by [redacted] from 1981 to 1989. [redacted] attests to having employed the applicant since 1981, however, he failed to provide the applicant's address at the time of employment, the location where the applicant had been employed, the dates when the employment commenced and ended; show periods of layoff, 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 8 C.F.R. § 245a.2(d)(3)(i). The statement that the applicant had been employed by the affiant is, therefore, not probative as evidence of the applicant's employment as it does not conform to the regulatory requirements.

The remaining documents in the record are dated after 1988. As such, they are not probative of the applicant's continuous residence during the requisite period.

In addition, the applicant has submitted inconsistent applications. On his Form I-687 application signed on November 5, 1995, the applicant indicated that from 1981 to 1985 he resided at [redacted] from 1985 to 1987 he resided at [redacted], and from 1987 to 1995 he resided at [redacted] On his From I-687 application, filed on January 6, 2006, however, the applicant indicates that from 1980 to 1986 he resided at [redacted], and from 1986 to 1990 he resided at [redacted] These discrepancies in addresses and periods of residence at the locations indicated are particularly significant as several of the affiants attest to

having known the applicant while they were neighbors, but do not provide their addresses during the periods of the applicant's residence to which they attest.

We note the applicant's statement that a considerable period of time has elapsed since his claimed residence. It is also noted, however, that the applicant signed his first Form I-687 in 1995, and it is reasonable to expect that he would have accurately indicated his residences during the requisite periods. We note, in addition, that besides the affidavits and letters attesting to the applicant's residence, the record is devoid of any supporting documentation, including evidence to support the affiants attestations, such as evidence of their residence.

This complete lack of reliable evidence casts doubt on whether the applicant resided in the United States from prior to January 1, 1982, as he claims. 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 applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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