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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

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[redacted]

DATE: MAY 2 3 2012 Office: ATLANTA 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:

SELF-REPRESENTED

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.

for 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, Atlanta, Georgia. The director subsequently reopened the proceeding.[1] The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the applicant's Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

On March 26, 2012, the AAO sent the applicant a notice informing the applicant of the deficiencies in his application and providing the applicant with an opportunity to submit additional evidence to establish that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant responded to the AAO's notice of deficiencies in the record on April 12, 2012 by requesting an extension of time so he could submit additional evidence. The AAO responded in writing giving the applicant until April 30, 2012 to submit additional evidence. The applicant responded to the AAO's request and resubmits copies of the same evidence previously submitted with his Form I-694, Notice of Appeal of Decision under Section 210 or 245A and Form I-687 application.

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.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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

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[1] On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff,* Case 2:86-cv-01343-LKK-JFM.

May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. The contemporaneous documents, affidavits, and letters of employment submitted substantiate the applicant's claim of residence from May 23, 1983 through May 4, 1988. Some of the evidence submitted indicates that the applicant was 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.

Here, the submitted evidence is not relevant, probative and credible as it relates to the period from prior to January 1, 1982 to May 28, 1983.[2] On the applicant's class membership determination form and the applicant's initial and current Form I-687 applications, the applicant claims that he entered the United States without inspection in September 1981 through San Ysidro, California. In the applicant's sworn statement taken on August 5, 1994 regarding his Form I-687 application, the applicant stated that his first entry into the United States was in 1978 without inspection through Tijuana. The applicant claims he left the United States in December 1978 to spend Christmas in Mexico and did not return to the United States until 1982 but cannot remember what month.

Form I-589 application, Request for Asylum in the United States, at part #12 indicates the applicant arrived in this country without inspection on May 28, 1983 at San Ysidro, California. Moreover, on the applicant's Form G-325A, Biographic Information, filed in conjunction with Form I-589, and signed under the penalty of perjury, the applicant claims that he resided at [redacted] in the province of Guanajuato, Mexico from January 1960 to May 1983.

The record shows that the applicant's Form I-589 was denied on April 12, 1994. The applicant was placed into deportation proceedings and subsequently filed Form I-256A, Application for Suspension of Deportation. At part #1 of the applicant's Form I-256A, he claims that he has been physically present in the United States without subsequent absences since May 1983 and at #6 of the Form I-256A application, he claims that he entered the United States illegally in May 1983 at San Ysidro, California.

The record demonstrates that the applicant and his wife appeared in deportation proceedings on July 25, 1995. The transcript of this hearing in which the applicant, his wife, [redacted] and his brother, [redacted] provide sworn testimony reveals that the applicant and his wife entered and began continuous residence in the United States in 1983 and that they were married on June 24, 1983 in Mexico. Therefore, it appears the applicant returned to Mexico after his illegal entry on May 28, 1983 to get married. The applicant does not state in his sworn testimony and the record does not reveal how long the applicant remained in Mexico after his marriage before reentering the United States.

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[2] The record contains a copy of the applicant's California identification card issued on May 23, 1983.

No evidence of record resolves these inconsistencies cited above. 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 applicant 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).

The applicant submitted, as proof of his asserted date of entry into the United States and continuous residence in the United States for the requisite period, affidavits, a letter from his previous employer and an affiliated organization. The letter from signed by states that the applicant worked there as a maintenance worker from November 1981 to September 1982. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to 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 letter from did not provide the applicant's address at the time of employment, job duties, the source of the information and whether this information came from company records that are available to the United States Citizenship and Immigration Services (USCIS), and if no records exist, how was the information provided.

A letter signed by . League coach of League states that the applicant was a member of the soccer league since November 1981 through August 1984. However, the applicant claims on his initial and current Form I-687 applications that he was not affiliated with any organizations. Again, in the applicant's sworn testimony given on July 25, 1995, when asked other than church participation, whether he belongs to any other club or organization, the applicant's reply was "no." It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra.* The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter does not state the applicant's address during membership, and establish how the author knows the applicant.

The applicant submitted two rent receipts dated November and December 1, 1981. The applicant's name, and address appears on both receipts. However, the applicant claims on his initial Form I-687 application that he resided in Chicago from 1978 to 1982 and Los Angeles from 1982 to present. The applicant claims on his current Form I-687 application that he resided at from September 1981 to May 1983. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra.*

The applicant also submitted copies of six photographs but the persons in the photographs are not identified and the photographs are not dated. This evidence does not establish the applicant's continuous residence during the requisite period.

The affidavits from attest to having known the applicant and/or knowing the applicant resided in the United States for all or part of the requisite period. However, states that he has been the applicant's friend since 1982 but knows the applicant resided in the United States since September 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, *supra*. The affiants generally attest to the applicant socializing with them as well as the applicant's good moral character but fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and his residence in the United States during the requisite period. The affiants' statements are significantly lacking in detail. The affiants gave no information about the applicant's family members, education, or other particulars about his life in the United States. The information given in the affidavits does not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. Overall, the affidavits provided are deficient in detail and can be given little probative value.

The affidavits submitted by the applicant are judged according to their probative value and credibility and not the quantity of affidavits submitted by the applicant. 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 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. The AAO finds that the witness statements do not provide sufficient details and in some instances are contradictory to other affidavits/declarations in the record. In many of the affidavits which are noted, the affiants did not sufficiently explain the facts stated in their affidavits/declarations and in some instances, the affiants did not explain how they gained the information about the stated facts. For the aforementioned reasons, the AAO finds that the witness statements can only be given nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5).

The applicant responded to the AAO's notice of deficiencies in the record on May 1, 2012, after being given an extension until April 30, 2012. The applicant resubmits copies of the same affidavits from [3] applicant's employer, copies of two receipts dated November 1, and December 1, 1981 and a copy of the applicant's California identification card issued May 23, 1983. This evidence was previously submitted with the applicant's Form I-694, Notice of Appeal of Decision under Section 210 or 245A and Form I-687 application and was discussed previously in the AAO's Notice of Intent to Deny (NOID) dated March 26, 2012 and reiterated in this decision.

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The evidence currently in the record is insufficient to establish the applicant's claim that he maintained continuous residence in the United States throughout the statutory period.

Based upon the foregoing, the applicant submitted sufficient evidence to establish his residency in the United States from May 23, 1983 through May 4, 1988. 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 from prior to January 1, 1982 through May 28, 1983 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.

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[3] The affiant has personal knowledge of the applicant's residence in the United States since July 1991, which is subsequent to the requisite period.