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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: **JUL 10 2009**

MSC 06 076 11259

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. All documents have been returned to the office that originally decided your case. 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.

for John F. Grissom
Acting 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [redacted] to act on behalf of the applicant, [redacted] is not recognized as authorized or an accredited representative pursuant to 8 C.F.R. § 292.1(a).[1] The decision will be furnished only to the applicant at his address of record.

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 director determined 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant reaffirms the veracity of his previous statement submitted in response to the Form I-72. The applicant submits additional evidence in support of his appeal

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).

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[1] *See* http://www.usdoj.gov/eoir/statspub/raroster.htm for the list of accredited organizations and representatives.

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A California identification card issued on June 9, 1986, which lists the applicant's address at [redacted]
- An undated statement from [redacted] who indicated that the applicant "has been working for me for many years as a gardener at my home."
- An affidavit from [redacted] who indicated that he took the applicant to Tijuana, Mexico on October 18, 1987.
- An affidavit notarized August 12, 2004, from [redacted] who attested to the applicant's residence at [redacted] since 1981.
- An affidavit dated August 12, 2004, from [redacted], who resides at [redacted] Hemet, California, indicated that the applicant "is sharing rent and bill payments with us."

The applicant also submitted a letter in the Spanish language from Our Lady of the Valley Catholic Church. This letter, however, cannot be considered as the required English translation was not submitted. Any document containing foreign language submitted shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

On May 5, 2006, the director issued a Form I-72, which requested the applicant to submit a printout of his earnings from the Social Security Administration; copies of his federal tax returns for 1986 to 1988; a copy of his school records from September 1980 to 1985; and a copy of his immunization record from 1980 to 1985.

The applicant, in response, asserted that he has been residing in the United States since 1980; however, he is unable to submit evidence of his employment from 1981 to 1988 as he was paid in cash and did not file taxes during this period. The applicant also asserted that he did not have a valid social security number due to his illegal status and he never visited a doctor. The applicant submitted:

- An affidavit from [redacted], who indicated that she met the applicant in March 1981 in Nuevo, California and that the applicant was in her employ as a gardener. The affiant indicated that she would see the applicant every weekend for some months and she became friends with the applicant.
- An affidavit from [redacted], who indicated that she met the applicant in February 1981 at her parent's house when she was a young child. The affiant indicated that she remembers the applicant was "always at my house for family functions and special occasions."
- An envelope postmarked in July 1986, from the applicant, who listed his address in Los Angeles, California at [redacted]

- An envelope postmarked subsequent to **February 17, 1985, from** the applicant, who listed his address in Los Angeles, California as [redacted]
- An envelope postmarked August 5, 1986 addressed to the applicant at [redacted] Los Angeles, California.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on June 20, 2007.

On appeal, the applicant submits a letter from [redacted] a medical doctor at California Eye Professional Medical Group, Inc., who indicated its facility has provided treatment since March 1980 to the applicant.

The statements issued by the applicant have been considered. However, the AAO does not view the single affidavit discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The letter from California Eye Professional raises questions to it authenticity as: 1) the applicant, in his response to the Form I-72, indicated, "I never went to see any doctors;" 2) the address, [redacted] Hemet, California, listed on the letter contradicts the address listed on the facility's website;[3] and 3) according to the Better Business Bureau's website,[4] the business did not start until January 1, 1985.

These factors tend to establish that the applicant utilized documentation in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

The applicant claims to have resided at [redacted], Hemet, California throughout the requisite period and provided affidavits from affiants corroborating this claim. However, the addresses listed on the applicant's California identification card and postmarked envelopes do not support this claim. No explanation has been provided by the applicant to resolve these contradictions.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or

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[2] The postage stamp with a value of 22 cents was not issued by the United States Postal Service until February 17, 1985. *See* www.usps.com/history/hist4_5.htm.

[3] *See* www. Caleyepro.com/index.cfm/contactus/locationspage.

[4] *See* www.la.bbb.org/businessreport.aspx?companyid=[redacted]

reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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 the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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.