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[REDACTED]

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FILE: [REDACTED]
MSC-05-061-10584

Office: NEWARK

Date: APR 24 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, Newark. 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 director determined that the applicant failed to establish his eligibility for temporary resident status. Specifically, the director stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States throughout the requisite period. The director erroneously stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States continuously since before January 1, 1982 through May 4, 1988, instead of from before January 1, 1982 until the date he attempted to file an application for temporary resident status. The director's error is harmless because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

It is noted that the director raised the issue of class membership in the decision. Since the director considered the application on the merits, she is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant stated that the director incorrectly determined that the applicant failed to submit credible evidence to support his claim of eligibility for temporary resident status. Counsel stated that the applicant submitted substantial documentation that should be more than sufficient to satisfy all of the eligibility requirements. Counsel stated that the interviewing officer failed to discuss the submitted documentation in the interview and submitted a general statement that the applicant had not submitted credible evidence but failed to state why the documentation was considered not to be credible.

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).

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) 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).

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.

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.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 30, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed only [REDACTED], New York, New York from December 1980 to May 1989 during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations that relate to the requisite period. He provided a form affidavit from [REDACTED] dated February 20, 1990, which states that the applicant resided at the [REDACTED] address from December 1980 to May 1989. The affiant stated that he was the applicant's neighbor from 1981 to 1989. This affidavit fails to include detail regarding the affiant's frequency of contact with the applicant, or whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated February 20, 1990, which states that the applicant lived at the [REDACTED] address from December 1980 to May 1989. The affiant stated that he was the applicant's good friend and neighbor since 1981. This affidavit fails to include detail regarding the affiant's frequency of contact with the applicant, or whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] dated February 20, 1990, which states that the applicant was employed by the affiant's company from December 1980 to June 1989 in a maintenance position. This affidavit refers to a picture of the applicant appearing below in the affidavit, yet no picture appears on the affidavit. This internal inconsistency casts doubt on the authenticity of the affidavit. In addition, this affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, where the official company records are located, and whether CIS may have access to the records. Therefore, the affidavit will be given very little weight.

The applicant provided an affidavit from [REDACTED] dated February 20, 1990, which states that the applicant resided at the [REDACTED] address from December 1980 until May 1989. This affidavit fails to provide detail regarding when and how the affiant met the applicant, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated June 22, 1990, which states that the applicant lived at [REDACTED] Paterson, New Jersey from 1981 to present. This affidavit is inconsistent with the applicant's Form I-687, where he indicated that he resided at the [REDACTED] address throughout the requisite period. This inconsistency calls into

question whether the affiant can confirm that the applicant resided in the United States during the requisite period.

The applicant also provided multiple attestations that fail to state that the applicant resided in the United States during the requisite period. These include the attestations from [REDACTED], and [REDACTED].

In denying the application the director noted that the applicant failed to establish his eligibility for temporary resident status. Specifically, the director stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States throughout the requisite period.

On appeal, counsel for the applicant stated that the director incorrectly determined that the applicant failed to submit credible evidence to support his claim of eligibility for temporary resident status.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that lack sufficient detail, fail to conform to regulatory standards, are inconsistent with the applicant's Form I-687, or fail to state that the applicant resided in the United States during the requisite period. The affidavits from [REDACTED], and [REDACTED] lack sufficient detail. The affidavit from [REDACTED] does not conform to regulatory standards. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687. The affidavits from [REDACTED] and [REDACTED] fail to state that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictions between the applicant's statements on his application and the documents he presented, and given his 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 for the requisite period 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.