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**U.S. Citizenship  
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Services**

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FILE: [REDACTED]  
MSC-06-103-11402

Office: LOS ANGELES

Date: **AUG 18 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:

SELF-REPRESENTED

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.

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, Los Angeles. 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 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 asserts that he entered the United States in 1981 and has resided continuously in the United States since that time. It is noted that the applicant has not presented any additional evidence on appeal. However, since the Notice of Denial did not specifically evaluate each piece of evidence submitted in support of the application, this office has conducted 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).

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).

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).

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 January 9, 2006. 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 stated his first address in the United States to be [REDACTED], Los Angeles, California from March 1981 until December 1987 and [REDACTED], Los Angeles, California from December 1987 until February 1990.

The applicant submitted the following documentation:

- A declaration from [REDACTED], who states that she was living in Los Angeles when the applicant, her friend, arrived in the United States in 1981. The declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her acquaintance with

the applicant, an address where the applicant resided in the United States, or how frequently she had contact with him. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.

- Notarized declarations from [REDACTED], [REDACTED], [REDACTED], [REDACTED], all of whom claim that they are friends of the applicant. All of the declarants, state that they met the applicant in or before 1981, and that have been good friends with him and have seen him "frequently" since that time. Ms. [REDACTED] states that she met the applicant in 1982 but she does not indicate where they met, or how she dates their acquaintance; Mr. [REDACTED] states that he met the applicant "a long time ago" and since that time they have kept in touch; [REDACTED] states only that he met the applicant in 1981; [REDACTED] states that he met the applicant approximately 25 years ago when the applicant came to live in his home. He indicates that his address is in City of Commerce, California. He does not provide any prior addresses and the applicant does not list an address in City of Commerce on his legalization application. It is also noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which he was residing during the requisite period. The declarants' uniformly ambiguous references to keeping in touch with the applicant since 1981 are not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning 25 years. For these reasons, all of these declarations have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.
- A declaration from [REDACTED] who states that she resides at [REDACTED] in Los Angeles, California. She states that the applicant is her nephew and that he lived at her home located at [REDACTED] in Los Angeles from March 1981 until December 1983 and at [REDACTED] in Los Angeles from December 1983 until December 1987. She indicated that the applicant was her tenant at both locations and she provides no additional relevant information. Her statements conflict with the information provided by the applicant on his Form I-687 application. He does not indicate that he ever lived at [REDACTED] in Los Angeles and in fact, lists his address during the same period to be at [REDACTED]. This inconsistency casts doubt on the affiant's claim that he has resided in the United States since 1981, and thus, the declarant's statement has little probative value.
- A notarized declaration from [REDACTED] who indicates that she has known the applicant since 1984 when he was living with [REDACTED]. She indicated that [REDACTED] helped to maintain the plumbing at her two properties. She does not provide any additional information including how she dates her initial acquaintance with the applicant, an address where the applicant resided and worked in the United States, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's continuous residency in the United States during the relevant period.

- Notarized declarations from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1982 when he was living across the street from their parent's home. They both also stated that the applicant maintains their parent's property located at [REDACTED] in Los Angeles, California. Like the declarant noted above, neither declarant provides any additional information including how they date their initial acquaintance with the applicant, an address where the applicant resided and worked in the United States, or how frequently they had contact with the applicant. Given these deficiencies, their statements have minimal probative value in supporting the applicant's continuous residency in the United States during the relevant period.
- A notarized declaration from [REDACTED] who indicated that she resides at [REDACTED] in Bell Gardens, California. Ms. [REDACTED] indicated that she met the applicant in 1981 when he came to live in her home with her and her husband until 1984. Her statements conflict with the applicant's I-687 application in which he indicated that he lived at [REDACTED] in Los Angeles, California from March 1981 until December 1987. It also conflicts with the declaration provided by [REDACTED] in which Ms. [REDACTED] indicated that the applicant lived with her at [REDACTED] in Los Angeles from March 1981 until December 1983. Thus, it will be given no weight.

The director denied the application for temporary residence on April 18, 2007. On appeal, the applicant asserts that he did arrive in the United States in 1981, but emphasizes that he was nervous during his interview with a CIS officer and may have confused some dates. He does not provide any additional information in support of his claims of eligibility. The applicant has not provided any evidence that would resolve the inconsistencies noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that 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.