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FILE: [Redacted]  
MSC-06-027-10444

Office: LOS ANGELES

Date: **MAY 22 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. 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.

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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that the applicant's testimony during her interview with a Citizenship and Immigration Services (CIS) officer on October 19, 2006 was not consistent with what she showed on her Form I-687 application regarding her absences from the United States and the start date of her residence in the United States. Because the applicant failed to provide consistent testimony regarding her residence in the United States during the requisite period, the director found the applicant had not met her burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

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

On appeal, the applicant submits a brief in support of her application. In this brief, she addresses the inconsistencies noted by the director.

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) 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).

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 27, 2005. 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 showed her address in the United States during the requisite period to be [REDACTED] in Lodi, New Jersey from 1984 until 1987; and [REDACTED] in Jersey City, New Jersey from 1988 to 1992. It is noted that the applicant did not show that she resided in the United States prior to 1984 on her Form I-687. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that during the requisite period, she had one absence from June to September 1985 when she went to the Philippines because her grandfather was sick. It is noted here that this shows that at a minimum the applicant was absent for all of July and August in 1985, which indicates she was absent for more than 45 days during the requisite period. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that during the requisite period she was employed at [REDACTED] in Lodi, New Jersey from 1984 to 1987 and then at [REDACTED] in New Jersey, New Jersey from 1988 to 1992. It is noted here that the applicant did not indicate that she was employed prior to 1984 on her Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant initially failed to submit evidence that she resided in the United States for the requisite period apart from her own testimony which, as was previously noted, indicated that she may have had an absence from the United States that exceeded 45 days.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on November 22, 2005. In his NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she

(or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant submitted the following in support of her application:

- An affidavit from [REDACTED] that was notarized on January 1, 2006. In his affidavit, the affiant states that the applicant is his wife's cousin. He states that it is personally known to him that the applicant resided in the United States from 1984 until 1987 and then from 1993 to 2003. Here, it is noted that the affiant indicated that the applicant resided on [REDACTED] in Jersey City, New Jersey from 1984 until 1987. The applicant's Form I-687 shows that during that time she resided on [REDACTED] in Lodi, New Jersey. It is also noted that this affidavit does not show an address for the applicant from 1988-1992. He further states that the longest period of time that he has not seen the applicant is one year and one month. Here, though the affiant states that he knows that the applicant resided in the United States from 1984 to 1987, he failed to submit proof that he himself resided in the United States at that time. He did not indicate which year he did not see the applicant. Because this affidavit is significantly lacking in detail, it carries only minimal weight as proof that the applicant resided in the United States from 1984 to 1987. Because this affiant does not claim that he personally knows that the applicant resided in the United States until 1984 it carries no weight as proof that she entered the United States before January 1, 1982.

The director of the Los Angeles District Office denied the application for temporary residence on October 19, 2006. In denying the application, the director stated that at the time of the applicant's October 19, 2006 interview with a CIS officer pursuant to her Form I-687 application, she stated that she was 25 years old when she first entered the United States through Mexico. The director further noted that the applicant indicated she lived with her aunt in Arizona from 1981 until 1986. It is noted here that the applicant's Form I-687 and the affidavit she submitted from [REDACTED] both state that the applicant resided in New Jersey from 1984-1987. It is also noted that the applicant's Form I-687 does not show a residence in the United States prior to 1984. The director also noted that while the applicant's Form I-687 shows she departed the United States from June 1985 and returned in September 1985 she stated that this absence occurred in 1987 at the time of her interview. The director stated that because of the inconsistencies in testimony at the time of her interview and evidence in the record regarding her dates and places of residence in the United States during the requisite period, the applicant failed to meet her burden of proving that she resided in the United States for the duration of the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO notes the director erred in her decision when she stated that the applicant, who was born April 9, 1961, would have turned 25 years old in 1984. The AAO finds that the applicant would have actually turned 25 years old in 1986 rather than in 1984. However, this error did not harm the applicant. 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).

On appeal, the applicant submits a brief. In this brief, she confirms that her birth date is April 9, 1961. She goes on to say that she entered the United States on May 24, 1981 through Mexico. She states that she then began residing in Phoenix, Arizona and moved back and forth between Arizona and New Jersey because her aunt had residences in both states. She goes on to say that she returned home in June, 1985 rather than in 1987. The applicant failed to submit additional evidence in support of her application that would prove that she resided in the United States for the duration of the requisite period. Therefore, the applicant has continued to fail to submit any evidence apart from her own testimony to prove that she entered the United States on a date prior to January 1, 1982 and then resided in the United States for the duration of the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until 1984 except for her own inconsistent assertions. The only evidence she has submitted in support of her application is the one affidavit noted above. The applicant's statements and the affidavit she submitted in support of her application are inconsistent such that they lack credibility for the reasons noted.

In this case, 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 her 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 she has failed to establish by a preponderance of the evidence that she 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