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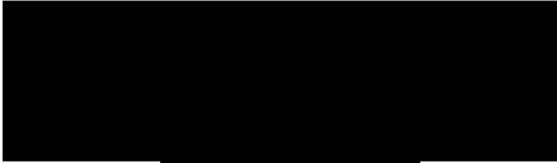
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FILE: [Redacted]
MSC-06-026-14090

Office: CHICAGO

Date: OCT 10 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 Director, Chicago. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in his Notice of Intent to Deny (NOID), the director of the National Benefits Center stated that the applicant failed to submit evidence that she was eligible to adjust to Temporary Resident Status. The director granted the applicant 30 days within which to submit additional evidence in support of her application. In her decision, the director of the Chicago District Office stated that though the applicant submitted both an unverifiable affidavit from [REDACTED] and a letter from herself in support of her application, this evidence did not satisfy her burden of proof. The director further stated that the applicant's absence from the United States from 2000 to 2004 caused her to be ineligible to adjust to Temporary Resident Status.

On appeal, the applicant submits contact information for affiant [REDACTED] including his address and telephone number.

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).

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.

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 alien 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.”

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 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 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 26, 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 indicated her first address in the United States was in Hamilton, Ohio and that her residence at this address began in 1984 and ended in 1990. At part #32 where the applicant was asked to list all of her absences from the United States, she did not indicate that she had ever been absent from the United States. At part #33, where the applicant was asked to list all of

her employment in the United States since she first entered, she stated that her first employment was as a beautician in Park City, Illinois in 1996. She did not indicate that she was employed during the requisite period.

Also in the record are notes from the applicant's interview with a Citizenship and Immigration Services (CIS) officer. The notes reflect that the applicant stated that she first entered the United States in October 1981 and that she resided in Newark, New Jersey from 1981 until 1984, after which time she moved to Ohio.

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 her 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).

Prior to date the NOID was issued to the applicant, the applicant failed to submit evidence that she resided in the United States for the requisite period.

In his NOID, the director of the National Benefits Center 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 this, the applicant submitted a second Form I-687, a statement and an affidavit as follows:

- A second Form I-687, signed on December 12, 2005. At part #30 of this Form I-687, the applicant indicated that she resided in Newark, New Jersey from 1981 until 1984 and then resided in Hamilton, Ohio from 1984 until 1990. The applicant did not indicate that she was employed in the United States or absent from the United States during the requisite period on this Form I-687. However, she did indicate that she was absent from the United States from 2000 to 2004 when she traveled to Ghana at part #32 of this Form I-687.

- A statement in which she asserts that she first entered the United States through Mexico in October 1981. She states that she resided in Newark, New Jersey from October 1981 until December 1984, after which time she moved to Hamilton, Ohio where she resided with her uncle. She states that she is including mail with this statement. However, the record does not indicate that she did so.
- An affidavit from [REDACTED], who indicates that he resides in Texas but does not provide his current address or his address of residence during the requisite period. The affiant states that he personally knows that the applicant resided in Newark, New Jersey from October 1981 until April 1986. He states that the applicant babysat his cousins and was a housekeeper for his now deceased uncle. However, the affiant does not state when he first met the applicant or whether he first met her in the United States. He does not indicate the frequency with which he personally saw the applicant in the United States during the requisite period. Further, the affiant claims that he knows that the applicant was employed, but he does not state where this employment occurred, when it occurred or whether it occurred in the United States. Though the affiant asserts that the applicant resided in Newark, New Jersey until April 1986, this is not consistent with either of the applicant's Forms I-687 or with her statement, where she indicated that she moved to Hamilton, Ohio in 1984. Because of its significant lack of detail, and because this affidavit is not consistent about the applicant's residence in the United States during the requisite period, this affidavit can be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.

The second Form I-687 is not consistent with her previously submitted Form I-687 regarding the applicant's addresses of residence during the requisite period. Further, while affiant [REDACTED] states the applicant resided in Newark, New Jersey until April 1986, this is not consistent with other evidence in the record. These inconsistencies cast doubt on whether the applicant has accurately represented her residence in the United States during the requisite period to CIS.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the application for temporary residence on January 19, 2007. In denying the application, the director stated that the affidavit from [REDACTED] was not verifiable. The director further stated that the applicant's absence from 2000 until October 30, 2004 constituted a single absence from the United States of more than 45 days. The director concluded that this absence caused the applicant to be ineligible to adjust to Temporary Resident Status pursuant to 8 C.F.R. § 245a.1(c)(1)(i). The director went on to state that the applicant then entered the United States lawfully and was in lawful status until April 29, 2005.

It is noted that 8 C.F.R. § 245a.1(c)(1)(i) states in pertinent part that an applicant shall be regarded as having resided continuously in the United States if, at the time of filing of the application for Temporary Resident Status if no single absence from the United States has exceeded 45 days. However, under the CSS/Newman Settlement Agreements, the term “the date of filing” 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. Therefore, the director erred when she stated that the applicant’s absence that began in 2000 caused the applicant to be ineligible to adjust to Temporary Resident Status, as absences that occurred after May 4, 1988 do not affect the applicant’s residence in the United States during the requisite period.

Similarly, the applicant’s lawful admission into the United States in 2004 was subsequent to the requisite period. Therefore, it has no bearing on whether she maintained unlawful status during the requisite period. The director’s statement that this lawful admission caused the applicant to fail to maintain continuous unlawful residence in the United States during the requisite period is in error.

However, the director’s errors are 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).

The AAO withdraws the director’s statements that the applicant’s absence from 2000 until October 2004 caused her to be ineligible to adjust to Temporary Resident Status and that her lawful admission in October 2004 caused her to fail to maintain continuous unlawful status during the requisite period.

On appeal, the applicant submits contact information for affiant [REDACTED]. She also asserts that she has continuously resided in the United States for the past 19 years.

The AAO has reviewed the evidence in the record. The director erred when she stated that the applicant’s absence and lawful admission that occurred subsequent to the requisite period caused her to fail to maintain continuous unlawful residence in the United States during the requisite period. However, the director correctly determined that the evidence in the record is not sufficient to meet the applicant’s burden of proof. Though the applicant submitted contact information for affiant [REDACTED] with her appeal, his affidavit only pertains to part of the requisite period and is not consistent with the Form I-687 that the applicant submitted pursuant to the CSS/Newman Settlement Agreements. Because of this and other inconsistencies within the record that were previously noted, the applicant has failed to satisfy her burden of proof.

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.