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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DALLAS Date: SEP 03 2009

MSC 06 102 19597
MSC 07 348 13149 - Appeal

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. The file has been returned to the National Benefits Center. 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.

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, Dallas, Texas. 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, on January 10, 2006.

The director denied the application on August 17, 2007, because 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 time period.

The applicant, through counsel, filed an appeal from the director's decision on September 12, 2007. On appeal, counsel submits a brief and additional documentation. Counsel asserts that the applicant has provided credible and verifiable evidence in support of his claim.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *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).

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).

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 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 (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.

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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The record reflects that the applicant claims to have initially entered the United States without inspection in September 1981 when he was nine years-old. He also claims that he departed the United States from June 10, 1985, to June 28, 1985, and again for a short time in May 1987 – re-entering the United States on both occasions without inspection. While living in the United States as a minor, the applicant claims to have resided with his brother, [redacted], who has submitted affidavits on the applicant's behalf stating that the applicant was in his custody from September 1981 through July 1986 and did not attend school because he (the applicant's brother) did not have legal status and was afraid he would be deported. United States Citizenship and Immigration Services (USCIS) officials were unable to contact the applicant's brother.
The applicant also submitted

1. A letter from [redacted] stating that the applicant and his brother attended The Cathedral of the Arts District Virgin of Guadalupe Shrine in Dallas, Texas, from 1981 to 1986, and that the applicant became a registered member with his wife, [redacted], as of February 2005. A USCIS attempt to contact was unsuccessful.

2. An affidavit from [redacted] stating he had known the applicant since 1985 and gave him a ride to a USCIS office when he attempted to apply for legalization.
3. An affidavit from [redacted] stating she gave the applicant a ride to Mexico in 1987. On appeal, counsel states that [redacted] is currently not available for contact.
4. An affidavit from [redacted] stating she had known the applicant's family since 1983. On appeal, counsel states that the applicant was "unable to retrieve an updated affidavit from [redacted]."
5. An affidavit from the applicant's mother, [redacted] corroborating statement (see No. 3, above).

On appeal, counsel provides new telephone numbers for the applicant and [redacted]

On a Form I-485, Application to Register Permanent Resident or Adjust Status, filed by the applicant on August 23, 2002, the applicant indicated in response to Part 3, Question 1(b) that he had never "been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations." However, as a result of being fingerprinted, United States Citizenship and Immigration Services (USCIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested by the Sheriff's Office in Dothan on May 4, 1996, on one charge of "Driving Under the Influence; and, on June 30, 1996, on one charge of "Alias D/U/I, and one charge of "Alias Y/O." There is also a document in the record indicating that the applicant waived a trail by jury and entered a plea of guilt/no contest to an undisclosed charge in the Municipal Court, City of Dallas, on September 6, 1990 ([redacted]

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant

consists of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period from prior to 1982 through the date he filed his application.

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 paucity of the documentation submitted, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States **throughout** 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.