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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-089-13689

Office: DALLAS

Date:

SEP 08 2009

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 Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 "John F. Grissom".

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, and 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to submit sufficient credible evidence to establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

On appeal, counsel for the applicant contends that the applicant has submitted sufficient credible evidence to meet his burden of proof.

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)(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). 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.2(d)(6).

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, "[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 or petition.

The sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to show that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he or his parent filed or attempted to file the application for temporary resident status.

The applicant stated during the interview that he first entered the United States in October 1981 and claimed that he did not go to school while in the United States during the requisite period. The record shows that the applicant was only five years old in October 1981. To prove that he has resided continuously in the United States since October 1981, the applicant submitted photocopies of some pictures claimed to be taken in the United States during the requisite period and a photocopy of an appointment letter sent to the applicant in 1987.

The AAO observes that the pictures are not dated and do not show when or where they were taken. They are not probative as evidence of the applicant's eligibility for the benefit sought. The appointment letter was sent to the applicant sometime in 1987 but by itself, it does not establish that the applicant has resided continuously in the United States since before January 1, 1982.

The applicant also provided a number of witness statements from 12 individuals. Upon review, the AAO finds that most of these statements are not relevant since they do not relate to the requisite period. Only five witness statements relate to the requisite period and will be considered. [REDACTED] and [REDACTED] all generally declare they have known the applicant since he was a child or for a long time. None describes with any

detail when or how he or she first met the applicant in the United States, where the applicant lived, and what the applicant did with his time during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because these witness statements are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's eligibility for temporary resident status.

indicates in his witness statement that the applicant is his cousin and that his cousin along with his uncle and aunt, the applicant's parents, resided in his home in the United States when they first entered the United States in October 1981. However, when contacted by an officer of United States Citizenship and Immigration Services (USCIS), he stated he could not remember when he met the applicant. also failed to state with specificity where the applicant lived during the requisite period, how long the applicant lived in his home, what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during that period. The lack of detail in the witness statement is significant, considering that the witness in this case claims to have known the applicant since 1981. The witness statement is minimally probative as evidence of the applicant's continuous residence in the United States since before January 1, 1982.

states in his statement that the applicant has been his patient since December 1981. The director found that could not be contacted since his telephone number had been disconnected. The doctor also does not state the source of the information and fails to submit corroborating evidence such as medical bills or medical reports. The doctor's statement alone without any corroboration from other contemporaneous documents is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

Further, the AAO observes that there is no evidence from a responsible caregiver who cared for the applicant when he was a child. There are no school, medical, or immunization records. There is no evidence from any of the witnesses that show they were in the United States during the requisite period. The AAO agrees with the director that the witness statements submitted do not establish the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the evidence submitted detract from the credibility of his 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 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.