U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: OKLAHOMA CITY Date: **SEP 22 2009**

MSC 06 088 16049

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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.

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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Oklahoma City, Oklahoma. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that there has been a misunderstanding and submits statements from herself and her father.

The Notice of Appeal (Form I-694) identifies [redacted] as the applicant's attorney or representative. However, the required Form G-28, Notice of Entry of Appearance as Attorney or Representative, has not been submitted. Accordingly, the AAO recognizes the applicant as self-represented and will address this decision solely to her.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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.

The regulations provide an illustrative list of documents – which includes affidavits and "any other relevant document" – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Mexico who claims to have entered the United States with her father in December 1981 and resided in this country ever since, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on December 27, 2005. As evidence of her residence in the United States during the 1980s the applicant submitted three brief statements, all dated October 28, 2005, from U.S. residents who claim to have known the applicant since the 1980s.

On December 28, 2006 the director issued a Notice of Intent to Deny (NOID), indicating that the documentation of record was insufficient to establish the applicant's continuous unlawful residence in the United States during the years 1981 to 1988. The applicant was granted 30 days to submit additional evidence.

In response the applicant submitted seven additional declarations from individuals who claim to have known the applicant in the United States during the 1980s, in addition to several photographs, a photocopied apartment rental contract dated in 1981, two American Express receipts dated in 1983 and 1984, and a photocopied 1988 Form 1040A federal income tax return.

On August 8, 2007 the director issued a Denial Notice. The director analyzed the evidence of record and determined that it failed to establish the applicant's continuous residence in the United States during the requisite period to qualify for temporary resident status under the Act.

On appeal the applicant submits statements from herself and her father explaining their living arrangements in the United States during the 1980s. The applicant indicated that she had no further documentation to submit.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that she has not.

The only documents in the record that bear evidence of dating from the 1980s – the apartment rental contract, the American Express receipts, federal income tax return for 1988 – all relate to other persons. Therefore, even if their authenticity could be verified, they would not represent persuasive evidence of the applicant's residence in the United States at that time. None of the photographs in the record bears any evidence as to when it was taken. Only one of the photos does the applicant identify as having been taken during the 1980s (assertedly on Easter Sunday 1985), but it too lacks any indicia to confirm that date. The statements and declarations submitted by various individuals who claim to have known the applicant in the United States during the 1980s offer some vignettes about the applicant. But they do not, either individually or collectively, contain detailed information showing that the applicant was continuously resident in the United States during the entire time period of December 1981 to May 1988. Nor are the statements and declarations supported by any documentation, verifiably dating from the 1980s, demonstrating the authors' personal relationship with the applicant during that decade.

Based on the foregoing analysis of the evidence, the AAO concurs with the director's decision that the documentation of record fails to establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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