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FILE: [REDACTED]  
MSC-05-187-26756

Office: BOSTON

Date: **JAN 11 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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**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, Boston. 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 was absent from the United States for more than 45 consecutive days and this absence was not brief, casual or innocent. The director also determined that the applicant had not established by a preponderance of the evidence that she entered the United States unlawfully prior to January 1, 1982 and that she was continuously physically present in the United States from January 1, 1982 and until she filed her application for temporary resident status. As a result, the director denied the application.

On appeal, the applicant asserted that she entered the United States without inspection and, therefore, has no corroborative evidence of her entry; the difficulty of obtaining evidence after the passage of time should be considered in evaluating her evidence; the applicant meets the residence and presence requirements for temporary resident status, and the applicant was absent from the United States for more than 45 days because she participated in the third anniversary of her father's death.

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)(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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 5, 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 listed only [REDACTED], Bronx, New York from October 2000 to present. The fact that the applicant failed to list any residences during the requisite period calls into question her claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two declarations. In his declaration dated December 5, 2005, [REDACTED] stated that he has known the applicant since 1982 when she lived in one of [REDACTED]’s tenant apartments in New Haven, Connecticut from 1982 to 1986. [REDACTED] also stated that he did not see the applicant again until 2001 when she rented an apartment from him located at [REDACTED]

[REDACTED], New Haven, Connecticut, where she still lives. This is inconsistent with the information provided on the applicant's Form I-687, where she indicated she was living at a Bronx, New York address in 2001. Although this inconsistency relates to circumstances falling outside the requisite period, it casts doubt on [REDACTED]'s claim to have personal knowledge of the applicant and calls into question his ability to confirm the applicant resided in the United States during the requisite period.

The applicant also provided a declaration from [REDACTED] dated December 2, 2005. Ms. [REDACTED] stated that she has known the applicant since 1982. This declaration fails to confirm the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant was absent from the United States for more than 45 consecutive days and this absence was not brief, casual or innocent. The director also determined that the applicant had not established by a preponderance of the evidence that she entered the United States unlawfully prior to January 1, 1982 and that she was continuously physically present in the United States from January 1, 1982 and until she filed her application for temporary resident status. As a result, the director denied the application.

The director erred in indicating temporary resident status requires that the applicant demonstrate he or she was not absent for more than 45 consecutive days unless the absence was brief, casual, or innocent; and that he or she was continuously physically present in the United States from January 1, 1982 until he or she filed for temporary resident status. In contrast, as stated above, 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). According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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)(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 director erred in basing his decision, in part, on the applicant's having been absent from the United States for more than 45 consecutive days, since this absence occurred after the applicant attempted to file for temporary resident status. The director's error is 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).

On appeal, the applicant asserted that she entered the United States without inspection and, therefore, has no corroborative evidence of her entry; the difficulty of obtaining evidence after the passage of time should be considered in evaluating her evidence; the applicant meets the residence and presence requirements for temporary resident status; and the applicant was absent from the United States for more than 45 days because she participated in the third anniversary of her father's death.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only two people concerning that period. The declaration from [REDACTED] is inconsistent with the information provided in the applicant's Form I-687 application. The declaration from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictions between the statements on the applicant's Form I-687 and her supporting documentation, her failure to provide address information on Form I-687 for the requisite period, and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.