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[Redacted]

FILE: [Redacted]  
MSC-05-243-13557

Office: LOS ANGELES

Date: MAR 05 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:

[Redacted]

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

**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, Los Angeles. 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 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 period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant stated that a Form I-72 was issued on January 23, 2006 and the applicant was given 30 days to respond. Counsel alleged that a Notice of Intent to Deny (NOID) was issued on February 1, 2006, prior to the expiration of the 30-day period. Counsel alleged that the director ignored the timely evidence submitted by the applicant. Counsel stated that the director failed to indicate how the applicant failed 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)(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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his 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 Supplement to Citizenship and Immigration Services (CIS) on May 31, 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 the following address during the requisite period: [REDACTED], Los Angeles, California from December 1981 to May 1997. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant stated, “none.” At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Self-employed handyman and wood installer from December 1981 to August 1997; and welder for American Steel Products, Inc. from March 1984 to August 1984.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents. These included rent receipts for months falling during the requisite period. The applicant provided receipts for November and December of 1982

and for December 1983. All of these receipts listed the applicant's name and listed the following address: [REDACTED] Los Angeles, California. These documents are inconsistent with the applicant's Form I-687, which indicates that the applicant lived at [REDACTED] and 1983, instead of at the [REDACTED]. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

The applicant also provided rent receipts including the receipt numbered [REDACTED] and dated January 1, 1985; and the receipt numbered [REDACTED] and dated February 1, 1986. The receipts include receipt numbers printed in red. The receipt numbers are sequential, although the dates of the receipts are not and more than one year passed between the two dates. This casts some doubt on the authenticity of the receipts. In addition, the receipts list the address [REDACTED] for the applicant. This is inconsistent with the applicant's Form I-687, which indicates that the applicant lived at [REDACTED] during 1985 and 1986, instead of at the [REDACTED]. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

The applicant provided a copy of a portion of an invoice from [REDACTED] Sleep Products, Inc. This invoice fails to list the applicant's address. As a result, it does not confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a form affidavit from [REDACTED] dated February 22, 2006, which states that, to the affiant's personal knowledge, the applicant has resided in Los Angeles from December 1981 to present. The affiant stated that he met the applicant at church and they continue to be church members and good friends. This information is inconsistent with the Form I-687 where the applicant failed to indicate that he is associated with any church when asked for all affiliations or associations with churches. This inconsistency calls into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration dated February 22, 2006, from [REDACTED] [REDACTED] pastor at St. Patrick Catholic Church. This declaration states that the applicant has been coming to this church from 1981 to the present. This declaration is also inconsistent with the Form I-687 where the applicant failed to indicate that he is associated with any church when asked for all affiliations or associations with churches. This inconsistency calls into question whether the declarant can actually confirm that the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by churches as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant provided two declarations from [REDACTED] Group Inc. The first declaration dated February 22, 2006 states that the applicant was a patient of the entity "formally [sic] known as West Coast Medical" from 1980 to 1997, when [REDACTED] medical group took over. This declaration is inconsistent with the information provided in the

applicant's Form I-687 where the applicant indicated his first period of residence in the United States began in December 1981. In addition, this declaration fails to provide detail regarding the applicant's addresses during the requisite period, the origins of the information attested to, whether there are any records of the applicant's medical visits, and whether CIS may have access to these records. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The second declaration from [REDACTED], dated August 28, 2006, states that the applicant was a patient of the entity "formally [sic] known as West Coast Medical" from 1981 to 1997 when [REDACTED] medical group took over. This declaration fails to explain the discrepancy between itself and the earlier declaration dated February 22, 2006, which confirms that the applicant was a patient of West Coast Medical from 1980 to 1997 instead of from 1981 to 1997. [REDACTED] failure to explain this discrepancy calls into question his ability to confirm that the applicant resided in the United States during the requisite period. This declaration also fails to provide detail regarding the applicant's addresses during the requisite period, the origins of the information attested to, whether there are any records of the applicant's medical visits, and whether CIS may have access to these records. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated May 11, 2002. The affiant stated that, to his personal knowledge, the applicant has resided in Los Angeles, California from October 1982 to present. The affiant indicated that he met the applicant at a family event. This affidavit fails to include details regarding the applicant's address during the requisite period, when the affiant met the applicant, and their frequency of contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated May 11, 2002. The affiant stated that, to his personal knowledge, the applicant has resided in Los Angeles, California from December 1982 to present. The affiant indicated that the applicant is a neighbor of his. This affidavit fails to include details regarding the applicant's address during the requisite period, when the affiant met the applicant, and their frequency of contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated May 21, 2002. The affiant stated that, to his personal knowledge, the applicant has resided in Los Angeles, California from December 1981 to present. The affiant indicated that the applicant is the affiant's neighbor. This affidavit fails to include details regarding the applicant's address during the requisite period, when the affiant met the applicant, and their frequency of contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], owner of American Steel Products, Inc. The declarant stated that the applicant was employed by the declarant's company as a welder from March 1984 to August 1984. The declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment.

The applicant also included three affidavits that fail to specifically confirm that the applicant resided in the United States during the requisite period. These include affidavits from [REDACTED] and [REDACTED].

In denying the application the director noted that 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 period. The director explained that the first letter from [REDACTED] Medical Inc., submitted in response to the Form I-72, conflicts with the applicant's statements during his interview with an immigration officer regarding his date of entry to the United States.

On appeal, counsel for the applicant stated that a Form I-72 was issued on January 23, 2006 and the applicant was given 30 days to respond. Counsel alleged that a NOID was issued on February 1, 2006, prior to the expiration of the 30-day period. Counsel alleges that the director ignored the timely evidence submitted by the applicant. Counsel stated that the director failed to indicate how the applicant failed to meet his burden of proof. The record does not indicate that the director issued a NOID to the applicant. The record indicates that the director evaluated the evidence submitted by the applicant and made specific reference in the decision to documents submitted by the applicant in response to the Form I-72. If the director erred in failing to give the applicant sufficient time to respond to the Form I-72, 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).

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period that conflicts with the applicant's statements on his Form I-687 or fails to confirm that the applicant resided in the United States during the requisite period. The applicant has submitted attestations that are inconsistent with the Form I-687, do not conform to regulatory standards, lack sufficient detail, or fail to confirm that the applicant resided in the United States during the requisite period. Specifically, the affidavit from [REDACTED] is inconsistent with the Form I-687. The declaration from [REDACTED] is inconsistent with the Form I-687 and fails to conform to regulatory standards. The February 22,

2006 declaration from [REDACTED] conflicts with the Form I-687 and lacks sufficient detail. The August 28, 2006 declaration from [REDACTED] and the affidavits from [REDACTED] lack sufficient detail. The declaration from Mr. Calderon does not conform to regulatory standards. The affidavits from [REDACTED] fail to confirm that 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 applicant's statements and the documents he provided, and given his reliance upon documents with minimal probative value, it is concluded that he 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.