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FILE: [Redacted]  
MSC-06-013-13317

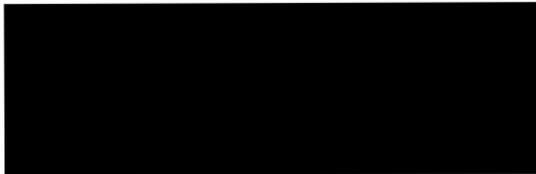
Office: LOS ANGELES

Date: **NOV 17 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 director of the Los Angeles office. 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 denied the application, finding 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.

It is noted that the director indicated that the applicant stated in a Form I-140 application filed on his behalf in 2002 that he first arrived in the United States in August 1990. The record indicates that a Form I-140 Immigrant Petition for Alien Worker was submitted on the applicant's behalf on October 2, 2002. At part 3 where applicants were asked to list the beneficiary's date of arrival, the Form I-140 indicates that the applicant's date of arrival was August 1990. The director erred in indicating that the Form I-140 stated that the applicant first arrived in the United States in August 1990. 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, counsel for the applicant asserts that the application was erroneously denied and that the applicant has proof that he lived in the United States prior to January 1, 1982. Counsel stated that the director erroneously indicated that the applicant stated he first arrived in the United States in August 1990. The applicant provided copies of immigration forms filed on his behalf, together with an additional declaration.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship written by friends and family, together with a document from the

Chicago Public Schools. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. When taken as a whole, these documents fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The applicant provided two undated declarations from [REDACTED]. The first declaration indicates that the declarant has known the applicant for the last 25 years and that he knows the applicant has been a continuous resident of the United States since that time. The declarant stated that his relationship to the applicant is as "[n]ephew." The second declaration states that the declarant has known the applicant for the last 26 years, and he knows the applicant has been a continuous resident of the United States since November 1981 except for a brief trip in 1990. The declarant also stated that the applicant is his nephew. These declarations lack detail regarding the nature and frequency of the declarant's contact with the applicant and the region where the applicant resided during the requisite period. Considering that the declarations are undated and lack significant detail, they will be given only minimal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided identical declarations from [REDACTED], and [REDACTED]. These declarations state that the applicant resided in the United States continuously since his entry in November 1981, except for a trip in 1990. These declarations lack detail regarding when and how the declarants met the applicant, the nature and frequency of their contact with him, and the region where he resided in the United States during the requisite period. Due to these deficiencies, the declarations will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The declaration from [REDACTED] states that the applicant resided in the declarant's home from February 1986 to February 1989 as a tenant. The declarant listed an address for himself that is consistent with the address provided by the applicant on his application for temporary resident status. This declaration lacks detail regarding how and when the declarant met the applicant, how the applicant came to be living with him, and how he dates the years of the applicant's tenancy. Therefore, this declaration will be given only minimal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant also submitted two documents that relate to his education in the United States. It is noted that the applicant claims to have first entered the United States when he was approximately two years old. The applicant submitted a declaration from his parents, [REDACTED] and [REDACTED]. The declaration states that the applicant was taught and prepared at home to pass

the admission test for Bell School in Chicago, where he was admitted in fifth grade. However, the applicant also provided a registration card for the Chicago Public Schools. This document indicates that the location of the last school attended by the applicant prior to attending Bell School was Pakistan. This document appears to be inconsistent with the statement from the applicant's parents. Although the director's decision raised this inconsistency, the applicant failed to address the inconsistency on appeal. The inconsistency, together with the applicant's failure to provide independent, objective evidence to explain and overcome the inconsistency, casts doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The inconsistency noted above is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The other documents provided by the applicant lack sufficient detail to overcome the noted inconsistency.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.