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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-130-11793

Office: SEATTLE

Date: NOV 19 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. 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) 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 Seattle 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the director ignored the dental records provided by the applicant, failed to attempt to verify the contents of the declarations submitted by the applicant, and relied on adverse information without giving the applicant an opportunity to examine or respond to the evidence and information.

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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 7, 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 the following address during the requisite period: [REDACTED], Seattle, Washington from January 1981 to January 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed one absence during the requisite period, which was a visit to Canada during May 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only employment with [REDACTED] in Auburn, Washington from March 1982 to October 1991 during the requisite period.

The documentation that the applicant submits in support of her 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, a declaration from her dentist, and dental records. 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 declaration dated December 7, 2004 from [REDACTED] states that the declarant first saw the applicant “in the Seattle area in the early 1980s on the street or in the stores.” He stated that he saw the applicant occasionally when he was shopping or running errands. The declarant’s wife learned in conversations with the applicant that the applicant was living in the area. This declaration fails to specifically confirm that the applicant resided in the United States during the requisite period except in the “early 1980s.” In addition, the declaration lacks detail regarding the year when the declarant met the applicant and their frequency of contact during the requisite period. In addition, the declarant indicated that he sees the applicant at a Sikh temple in Renton, Washington from approximately 1989 to the present time. This information is inconsistent with the applicant’s Form I-687, where she failed to indicate that she was associated with a Sikh temple when asked to list all affiliations or associations. Although this falls outside the requisite period, the inconsistency casts some doubt on the declarant’s claimed knowledge of the applicant’s activities. Considering these deficiencies, this declaration will be given only nominal weight in establishing that the applicant resided in the United States at some time in the early part of the 1980s.

The declaration dated December 6, 2004 from [REDACTED] states that the declarant met the applicant in 1982 through the Sikh community in Seattle, he knew her family, and he saw her with her family at “the temple” at least once per month. The declarant stated that he knows the applicant has lived in the Seattle area from 1982 to the present. The declarant stated that he used to see the applicant once per month from 1982 to 1990 and that after 1990 he has seen the applicant three to four times per month. The declarant provided a Seattle area address for himself. The information in this declaration appears to be inconsistent with the applicant’s Form I-687, where she indicated that she resided in California from February to December of 1990. Since the applicant moved away from Seattle in 1990, it is unclear why her contact with the declarant would increase, rather than decrease, after 1990. In addition, the declaration is inconsistent with the Form I-687 because the declaration indicates that the applicant attended a Sikh temple once per month, yet the applicant failed to indicate that she was associated with a Sikh temple when asked to list all affiliations or associations. These inconsistencies cast some doubt on the declarant’s ability to confirm that the applicant resided in the United States from some time in 1982 until the end of the requisite period.

The applicant also provided declarations from her son and daughter. Both of these documents fail to state that the applicant resided in the United States during the requisite period, provide her date of entry into the United States, or provide any information regarding her activities during the requisite period. Therefore, these documents will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided a declaration dated October 18, 2004 from [REDACTED] §. This declaration states that the applicant has been a patient of record at Tukwila Dental Center from March 11, 1986 to the present. The applicant also provided dental records listing visits to Dr. [REDACTED] from March to May 1986 and additional visits starting in November 1992. The address listed for the applicant on the records matches the address that the applicant listed on the Form I-687 during the requisite period. Since [REDACTED] failed to indicate whether he had contact with the applicant in the United States from June 1986 until the end of the requisite period, these documents constitute some evidence that the applicant resided in the United States from March to May 1986.

The record also contains a Form I-687 signed by the applicant on December 12, 1990 under penalty of perjury and submitted to establish class membership. This Form I-687 is inconsistent with the current Form I-687 in that it indicates that the applicant resided at [REDACTED], instead of [REDACTED], during the requisite period. In addition, the 1990 Form I-687 fails to list any employment for the applicant during the requisite period, yet the applicant listed employment with [REDACTED] from March 1982 to October 1991 on the current Form I-687. These inconsistencies cast some doubt on the credibility of the applicant's claim to have resided in the United States during the requisite period.

In denying the application, the director found that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that, on or about August 20, 1993, the applicant's Form I-687 was identified as part of Operation Catchhold. The applicant was identified as an individual who had procured her Form I-688A card through the payment of a bribe to the Salinas Chief Legalization Officer, while he was working undercover.

On appeal, counsel for the applicant asserts that the director ignored the dental records provided by the applicant, failed to attempt to verify the contents of the declarations submitted by the applicant, and relied on adverse information without giving the applicant an opportunity to examine or respond to the evidence and information.

If the director failed to consider the dental records provided by the applicant, this error is found to be harmless. 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 addition, it is noted that the director provided the applicant with the information regarding Operation Catchhold that cast doubt on the credibility of her claim. The applicant has failed to explain and overcome these concerns with independent, objective evidence.

The inconsistencies in the record, noted above, are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The applicant's procurement of her Form I-688A card through the payment of a bribe is also relevant in that it calls into question whether the applicant has a genuine claim of continuous residence throughout 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).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.