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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 06 089 13979

Office: NEW YORK, NEW YORK

Date: **NOV 26 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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in dark ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director (director), New York, New York denied the Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, filed 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, or *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). The matter is now before the Citizenship and Immigration Services (CIS) Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had not provided adequate evidence to support his claim that he had resided continuously in the United States in an unlawful status during the statutory period, a date prior to January 1, 1982 and through the date that he was dissuaded from filing the Form I-687 during the original filing period. Thus, the director denied the application.

On appeal, the applicant asserted that he has provided sufficient evidence to establish continuous, unlawful residence in the United States during the requisite period.<sup>1</sup>

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>2</sup>

Under the CSS/Newman Settlement Agreements, CIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the

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<sup>1</sup> Reverend ██████████ of Catholic Migration Services of Queens (CMSQ), Elmhurst, New York, filed a Form G-28 in this matter. That form purports that the Board of Immigration Appeals (BIA) has granted Rev. ██████████ the status of accredited representative and his organization CMSQ the status of recognized organization. However, Rev. ██████████ and CMSQ are not included in the BIA roster of accredited individuals and recognized organizations. *See* this BIA roster posted at the Executive Office of Immigration Review (EOIR) website <http://www.usdoj.gov/eoir/statpub/recognitionaccreditationroster.pdf>, accessed November 17, 2008. Rev. ██████████ also indicated on the Form G-28 that he is an attorney and a member in good standing of the bar of the “following state”, but he left blank the line on the Form G-28 where he was to list the state in which he is licensed to practice law. On another Form G-28 in the record filed by Rev. ██████████ in 2001 prior to the submission of the appeal, the reverend indicated that he is a member in good standing of the New York Bar. However, the attorney search feature of the New York State Unified Court System website which lists members of the New York state bar, past and present, does not include the name ██████████. *See* <https://iapps.courts.state.ny.us/attorney/AttorneySearch>, accessed November 19, 2008. Therefore, the AAO will treat the applicant as self-represented in this matter. The AAO will also consider all evidence which has been submitted into the record.

<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Immigration and Naturalization Service (INS), now CIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

For purposes of establishing residence and presence as defined at 8 C.F.R. § 245a.2(b), the term “until the date of filing” shall mean until the date the alien was “front-desked” or discouraged from filing the Form I-687 consistent with the definition of the CSS/Newman class membership. *See Id.*

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See Id.* and § 245A(a)(2)(A) of the Act. An alien who applies for temporary resident status under the CSS/Newman Settlement Agreements 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. *See* CSS/Newman Settlement Agreements and § 245A(a) of the Act.

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).

Failure to provide evidence other than affidavits shall not be CIS’ sole basis for finding that an applicant failed to meet the continuous residence requirement. *See* CSS/Newman Settlement Agreements. In evaluating the sufficiency of the applicant’s proof of residence, [CIS] shall take into account the passage of time and other related difficulties in obtaining documents that corroborate unlawful residence during the requisite periods. *See Id.*

The regulation at 8 C.F.R. § 245a.1(c) read in conjunction with the CSS/Newman Settlement Agreements provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed [during the original filing period or the date that the alien was discouraged from filing], unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant’s statements must not be the applicant’s only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states 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 or 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 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, to deny the application or petition.

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden of establishing continuous unlawful residence in the United States throughout the requisite period. Here, the applicant has failed to meet this burden.

On December 28, 2005, the applicant filed the Form I-687 pursuant to the terms of the CSS/Newman Settlement Agreements. He also indicated on the CSS/Newman (LULAC) Class Membership Worksheet, Form I-687 Supplement, which is dated December 12, 2005 and was submitted with the Form I-687 received on December 28, 2005, that he is a CSS or Newman (LULAC) class member.

On February 9, 2007, the director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application because the applicant had not established that he resided continuously in the United States during the requisite period. The director specified that at the June 24, 2004 Legal Immigration Family Equity Act (LIFE) legalization interview the applicant initially indicated that subsequent to his June 20, 1981 entry, he did not depart the United States until November 30, 1987. However, later at that same interview, he specified that he resided in Colombia for three months during 1985. On the Form I-687

submitted on December 28, 2005, the applicant indicated that during the statutory period he only exited the United States on one occasion, and that that exit occurred during 1987. At the June 6, 2006 LIFE legalization interview, the applicant testified that he did depart the United States during 1987 and during 1985, but that he was only absent for one month during 1985.

The director pointed out in the NOID that the applicant's inconsistent testimony and inconsistent statements on the various Forms I-687 submitted into the record call all of his statements and other evidence into question. Consequently, the director found that the applicant had failed to provide credible evidence to establish continuous residence in the United States throughout the statutory period and for this reason the director intended to deny the application.

In the NOID, the director indicated that she also intended to deny the application because the applicant testified at the June 24, 2004 LIFE legalization interview that he was outside the United States for three months during 1985 or for more than 45 days in a single absence during the statutory period, and that he made no assertion that emergent reasons kept him from returning to the United States sooner, and as such he is not eligible for temporary resident status under the CSS/Newman Settlement Agreements. See 8 C.F.R. § 245a.1(c) and the CSS/Newman Settlement Agreements.

The director also indicated that the photographs of the applicant in the record do not support the applicant's claim that he resided in the United States throughout the statutory period and they are not probative evidence.

In addition, the director indicated that the seventeen statements in the record which purport to support the applicant's claim that he resided in the United States during the statutory period are not probative because, for example, none of these statements include evidence that the affiant or individual who wrote the statement has personal knowledge of the applicant's continuous residency in the United States throughout the statutory period. The AAO would note in particular that none of the statements in the record includes any manner of assertion that the affiant or individual who wrote the statement has knowledge that the applicant resided *continuously* in the United States in 1985 such as an assertion that the affiant interacted with the applicant on a weekly or daily basis in the United States throughout that year. Yet, the applicant testified directly at the June 6, 2004 LIFE legalization interview that for three months during 1985 he resided outside the United States.

The file also contains photocopies of envelopes addressed to the applicant at addresses in the United States and postmarked in Colombia on March 14, 1982, January 26, 1983, May 22, 1984, September 24, 1985, June 26, 1987 and on two dates after the statutory period.<sup>3</sup> The director indicated that because no corresponding U.S. postmark is visible on these envelopes that this evidence is not probative. The AAO would underscore that even if these five envelopes were mailed to the applicant in the United States on the dates indicated, they would not be sufficient evidence to establish the applicant's continuous residency throughout the statutory period, nor would they be sufficient to overcome the applicant's testimony that he resided outside the United States for three months during 1985 and other inconsistencies in the evidence regarding his claim to continuous residence in the United States throughout the requisite period.

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<sup>3</sup> These envelopes do not include postage stamps. They are metered envelopes.

The rebuttal dated March 9, 2007 indicates that where the applicant mentioned only his 1987 absence from the United States and not the 1985 absence, he did so only because he was instructed to list absences between May 1987 and May 1988 in order to establish his eligibility for "amnesty." In addition, the rebuttal asserts that any other inconsistency in the applicant's statements may be attributed to the fact that many years have passed since the statutory period and as a consequence, the applicant's memory is at times faulty regarding events that occurred during that period; and that the applicant felt pressure or intimidation from the officials who interviewed him which prompted him to feel nervous and to make mistakes when providing testimony. The rebuttal also asserts that those who provided statements for the record on the applicant's behalf are available to come forward to testify that the applicant resided continuously in the United States throughout the statutory period.

On March 15, 2007, the director issued a notice of decision in which he denied the application based on the reasons set forth in the NOID.

On April 15, 2007, CIS received the Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the INA in this matter.

The statement dated March 30, 2007 submitted on appeal asserts that the evidence of record does establish that the applicant resided continuously in the United States in an unlawful status throughout the requisite period.

The record includes the following adverse or inconsistent evidence regarding this assertion.

1. Notes from the June 24, 2004 LIFE legalization interview at which the applicant indicated that he spent three months in Colombia beginning in May 1985, and that his daughter [REDACTED] was born in Colombia on March 31, 1986. He also testified during this interview that he was in Colombia from November 30, 1987 through January 1988. He indicated that he was not absent from the United States at any other time during the requisite period.
2. The notarized birth certificate of [REDACTED] born on March 31, 1986 in Colombia which lists the applicant as [REDACTED] father. According to the entries on the birth certificate, when this birth was registered on June 17, 1986 in Valle Del Cauca, Cali, Colombia, the applicant was present and signed the birth certificate and placed his thumb print on the document.
3. Notes from the June 6, 2006 LIFE legalization interview at which the applicant testified that during June 1985, he exited the United States to tend to a family emergency in Colombia and returned one month later to the United States. He also testified that he exited the United States on November 30, 1987 and returned on January 13, 1988. He indicated that he was not absent from the United States at any other time during the requisite period.
4. The Form I-687 signed by the applicant under penalty of perjury on September 26, 1992 on which he stated at item 35 that he had had only one absence from the United

States since January 1, 1982 and that absence occurred from November 30, 1987 through January 13, 1988.

5. The Form I-687 signed by the applicant under penalty of perjury on November 23, 1993 on which he stated at item 35 that he had had only one absence from the United States since January 1, 1982 and that absence occurred from November 30, 1987 through January 13, 1988.
6. The Form I-687 signed by the applicant under penalty of perjury on December 12, 2005 on which he stated at item 32 that he had had only one absence from the United States since January 1, 1982 and that absence occurred from November 1987 through January 1988.

During the June 24, 2004 LIFE legalization interview, the applicant indicated that he was absent from the United States during three months of 1985 beginning in May 1985, and that his only other absence during the requisite period occurred during 1987. Yet, the applicant's daughter's birth certificate in the record indicates that the applicant was in Colombia during June 1986 when he registered his daughter's birth. Moreover, on the three Forms I-687 in the record, the applicant indicated that he never exited the United States at all during 1985, and that his only absence from the United States during the requisite period occurred from November 1987 through January 1988.

As indicated by the director in the NOID, 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent, objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States throughout the entire requisite period which is sufficient to overcome the inconsistencies in the record relating to this claim.

The various statements and affidavits in the record which purport to substantiate the applicant's residence in the United States throughout the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the requisite period, and they are not probative. Any assertion that the applicant's faulty memory or an official who made the applicant feel nervous caused him to give inconsistent accounts regarding whether he was outside the United States for more than 45 days during 1985 is also not objective, independent evidence such that it might overcome inconsistencies in the record such as the applicant's testimony that he was in Colombia for three months in 1985, at which time no apparent emergent reasons kept him from returning to the United States within 45 days, and documentary evidence, in the form of his daughter's birth certificate, that he was in Colombia during June 1986, and such assertions are not probative.

Further, any assertion that the applicant was instructed to only provide information about absences between May 1987 and May 1988 on the Forms I-687 is contradicted by the instructions on those forms themselves which ask the applicant to provide information on all absences from the United States since January 1, 1982, and any such assertion is not objective, independent evidence sufficient to overcome inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the requisite period.

The applicant has failed to establish continuous residence in an unlawful status in the United States throughout the requisite period. Thus, the applicant is not eligible for temporary resident status under section 245A of the Act as read in conjunction with the CSS/Newman Settlement Agreements. *See* section 245A(a)(2) of the Act and the CSS/Newman Settlement Agreements.

Finally, this office notes that the applicant indicated at his June 6, 2006 LIFE legalization interview that prior to January 1, 1982, police arrested him for having used a fraudulent Social Security Card. Subsequent to this, he was released without any resultant trial. The Federal Bureau of Investigation (FBI) fingerprint check in the record indicates that the FBI has no record of an arrest or of any formal charges filed against the applicant. Such dismissed charges do not affect the applicant's eligibility for the benefit sought in this matter.

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