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FILE: [REDACTED]  
MSC-06-080-11644

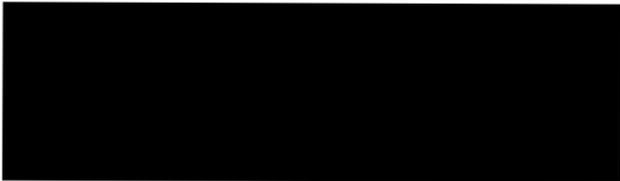
Office: MIAMI

Date: **SEP 29 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.

  
Robert P. Wiemann,  
Administrative Appeals

**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, Miami. 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, on November 22, 2005 (together, the I-687 Application). The director determined 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 denied the application as the applicant had not met her 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, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a copy of the director's decision. On the Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, the applicant acknowledges receipt of a denial decision regarding her Form I-687 application but indicates that the attachment to the decision was regarding the applicant's spouse's case. The applicant submitted a copy of the director's decision issued to the applicant on November 27, 2006 that is identical to the denial in the record of proceeding. CIS records reflect that the applicant's Form I-687 was denied. However, because of the confusion surrounding the applicant's receipt of the final decision on her Form I-687 application, the applicant may not have been given an adequate opportunity to respond to the director's denial decision. On July 31, 2008, the AAO issued a notice of intent to deny (NOID) providing the applicant with 30 days to respond. As of this date, the AAO has not received a response to the NOID or any additional evidence from the applicant. Therefore, the record is complete.

The AAO bases its decision upon a *de novo* review of the entire record of proceeding, which includes its own independent analysis of all the evidence. 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). As reflected in the discussion of the evidence below, the AAO does not discount any of the witness statements for lack of a phone number, identifying documentation, or proof of the declarant's presence in the United States. Rather, the AAO will evaluate the content of each statement for probative value and credibility in accordance with the analytical framework described below.

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic

information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the 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 (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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on December 19, 2005. At part #16 of the Form I-687, where applicants are instructed to list their last entry into the United States the applicant stated that she last entered the United States on October 18, 2002 at San Ysidro without a visa. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her addresses during the pertinent time period as:

California from June 1981 to March 1987; and [REDACTED] from March 1987 to January 1994. At part #32, where applicants are asked to list all their absences from the United States since entry the applicant listed three absences. The applicant stated that she visited Brazil from June 1997 to July 1997, June 2001 to July 2001, and September 2002 to October 2002. At part #33, where applicants are asked to list all employment in the United States, the applicant stated she was first employed as a "window" by Bay Area Carpet Cleaning from April 1989 to March 1993. It is noted that the applicant was born on [REDACTED] and thus the applicant was 14 years old when she claims to have entered the United States in 1981.

In support of her application, the applicant has submitted income tax returns from 1993 to 2005; a copy of the applicant's Social Security Statement indicating that she paid social security taxes from 1992 to 2003; a copy of the applicant's passport issued on January 4, 2002; a copy of the applicant's daughter's birth certificate; utility bills; and two affidavits from [REDACTED]. The applicant's passport is evidence of her identity, but does not demonstrate that the applicant entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the relevant time period.

The only evidence relates to the requisite period are the affidavits signed by [REDACTED]. The AAO does not find [REDACTED] affidavits probative. In his notarized affidavit dated February 15,

2006 [REDACTED] states that he has known the applicant since August 1981. [REDACTED] states that he met the applicant at a university in Berrien Springs, Michigan while he was "coursing a seminar in theology" and the applicant was studying English. In a letter dated November 2, 2006, Mr. [REDACTED] states that he met the applicant while she studied English in the library of Andrews University. [REDACTED] states that he would see the applicant at the library three times a week. Mr. [REDACTED] also states that the applicant "lived with two other girls in the same apartment in order to share the rent and other expenses." [REDACTED] states that the applicant lived in Michigan from 1981 to 1987 and "worked as a house cleaner." Finally, [REDACTED] says that he and the applicant became "good friends." The AAO notes that [REDACTED] affidavits are inconsistent with information that the applicant provided in the Form I-687. [REDACTED] states that the applicant lived in Michigan from 1981 to 1987. However, in the Form I-687, the applicant stated that she lived in California during that time period. [REDACTED] also states that the applicant worked as a house cleaner from 1981 to 1987 and the applicant did not include that employment in the Form I-687. 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, 591-92 (BIA 1988). No evidence of record supports your claim of entry into the United States before January 1, 1982 and continuous residence in the U.S. for the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States prior to January 1, 1982. The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on January 31, 2006. The director denied the application for temporary residence on November 27, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence. The AAO issued a NOID on July 31, 2008 stating that a lack of response would result in the dismissal of the applicant's appeal. The applicant did not respond to the AAO's NOID.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has 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.