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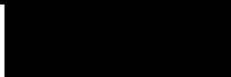
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**U.S. Citizenship  
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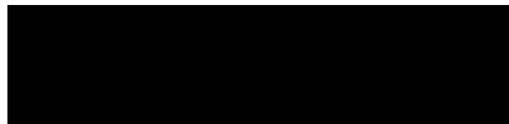
Office: NEW YORK

Date: **AUG 19 2009**

IN RE: Applicant: 

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, New York, and 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had provided evidence inconsistent with his testimony during the interview.

On appeal, the applicant through his counsel asserts that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until the date he filed or attempted to file the application for temporary resident status. He further contends that he has provided sufficient credible evidence and testimony to meet his burden of proof. The applicant believes that the director might have looked at another person's records in adjudicating his application.

In reviewing the records, the AAO finds that the director indeed has inappropriately consolidated two files and reviewed both files as if they were the applicant's. To correct the problem, the AAO separated the records of [REDACTED] and [REDACTED] from [REDACTED], [REDACTED], and [REDACTED] and further created one file for the applicant. The applicant's records are now consolidated into one file, [REDACTED]. The AAO will now review the records and adjudicate the 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).

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).

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

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 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 sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States since before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

The applicant asserted during the interview on June 29, 2006 that he had resided continuously in the United States since June 1981. To validate his assertion at the interview, the applicant submitted various documents including several envelopes sent from India and allegedly received by the applicant during the requisite period; an airline ticket issued on January 3, 1987; seven affidavits; and a letter.

Upon review, the AAO finds that the envelopes with the stamps and postmarks are not credible and not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period. None of the postmarks are discernible. The AAO cannot verify when these mails were mailed or whether they were sent to the applicant during the requisite period.

The director noted in the notice of decision that the airline ticket issued in 1987 was printed in 2001 and that it was written on a 1994 form and thus, she concluded that the ticket was not credible and had no probative value. Upon review, the AAO cannot verify whether the 1987 ticket was printed in 2001 or if it was written on a 1994 form; nevertheless, the AAO agrees with the director that the ticket is not credible and has no probative value as evidence of the applicant's continuous residence in the United States since before January 1, 1982. None of the information on the ticket except the date of issue is eligible to read. It is not clear whether the ticket was issued to the applicant or why it was issued.

claims in his letter that the applicant has been his patient since June 18, 1987. No further information is provided. The applicant additionally fails to submit corroborating evidence such as medical bills or medical reports that tend to prove the credibility of letter. The letter, by itself, does not prove that the applicant resided in the United States continuously or was physically present during the requisite period.

and all state in their affidavits that they have known the applicant since he came to the United States in 1981. Some list the addresses where the applicant has been residing in the United States since 1981. None, however, describes with any detail the events and circumstances of how the affiant first met the applicant in the United States or how he dates his acquaintance with the applicant in 1981. Neither also states with specificity his frequency of contact with the applicant during this period. Simply listing the address where the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

claims in his affidavit that the applicant visited him in Canada between May 15, 1987 and June 14, 1987. His claim, however, is inconsistent with the applicant's statement during the interview and with the applicant's answer on the legalization questionnaire dated

April 4, 1990. The applicant stated at his interview on June 29, 2006 that he went to Canada in 1984 and indicated on the 1990 legalization questionnaire that he went to Canada in November 1987. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The record additionally contains evidence that the applicant tried to enter the United States as a crewman on February 26, 1989 but failed. The report of the applicant's desertion from his ship indicates that the applicant left his ship on February 28, 1989. The applicant stated no absence in 1989 during the interview. Nor did he list an exit in 1989 in his Form I-687. Further detracting from the credibility of the applicant is his sworn statement on March 3, 1991, when he was arrested by immigration officials at JFK International Airport upon entering the United States. The applicant stated during the 1991 interview that he resided in the United States for three years beginning in 1981, then returned to the United States in 1987, and had continuously lived in the United States ever since. The applicant's 1991 statement is inconsistent with his 2006 assertion that he has resided continuously in the United States since June 1981.

The affidavits and the letter mentioned above, when considered individually and in light of other evidence of record including the applicant's testimony, do not establish by a preponderance of the evidence that the applicant resided continuously and was physically present in the United States during the requisite period.

The noted inconsistencies, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the lack of detail in the record seriously detract from the credibility of his 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 and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he 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