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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:



Office: LOS ANGELES

Date:

JUL 01 2009

MSC 06 091 12337

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. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the application will be remanded.

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, and that the evidence submitted by her did not establish her eligibility for the immigration benefit sought. The director denied the application, finding that 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 submits additional information and asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 contains the following evidence which is material to the applicant's claim:

- Affidavits from 11 individuals who attest that the applicant has resided in the United States for all, or a portion of, the requisite period;
- The applicant's statement indicating that she first came to the United States in May of 1980 and that she has continuously resided here since that time;
- A copy of the birth certificate of the applicant's brother indicating that he was born in the United States on September 6, 1981;

A copy of the immunization record of [REDACTED]

- A copy of the applicant's immunization record indicating that she was first immunized in the United States in 1984; and
- Amended social security records for the applicant's father indicating that he earned wages in the United States during the requisite period from 1980 – 1986, and in 1988.

- A Notice To Appear (NTA) was issued to the applicant by the legacy Immigration and Naturalization Service (INS) in which it is stated that: the applicant is not a citizen or national of the United States; the applicant is a native of Mexico and a citizen of Mexico; the applicant entered the United States at or near San Ysidro, CA on or about May 10, 1980; and that the applicant was not then admitted or paroled after inspection by an immigration officer. On that basis, it was charged that the applicant was subject to removal from the United States pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

Pursuant to that charge, the applicant was ordered removed from the United States on November 1, 1999 by an immigration judge, and was granted voluntary departure until February 29, 2000. The record indicates that the applicant did not voluntarily depart the United States as ordered. Arrangements were then made by INS to deport the applicant on June 27, 2000. The applicant failed to appear for her deportation. Pursuant to section 212(a)(9) of the Act, the applicant was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of departure because she had been found inadmissible under section 212 of the Act and ordered removed by an immigration judge in proceedings under section 240 of the Act.

In this instance, the applicant submitted evidence which corroborates her claim of residence in the United States during the requisite period. The applicant states that she first came to the United States in May of 1980. At that time she was seven months of age. The record establishes that the applicant's father began earning United States wages in 1980, and earned wages in each year of the requisite period except 1987. The applicant's brother was born in the United States in 1981, which establishes the presence of the applicant's mother in this country in 1981, prior to the beginning of the requisite period. The applicant's brother [REDACTED] immunization records indicate a vaccination date of September 20, 1982. The applicant's immunization records show that the applicant was first immunized in the United States in 1984. Taken as a whole, the evidence establishes that the applicant has resided in the United States for the duration of the requisite period. The applicant has presented relevant, probative, and credible evidence that establishes that her claim is "probably true." The applicant has, therefore, 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). The director has not found that the evidence of record was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Therefore, based upon the foregoing, the applicant has established 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 appeal may not be sustained, however, as the applicant is inadmissible. Section 245A(a)(4)(A) of the Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record does not indicate that the applicant ever requested or was granted such a waiver. In this instance, the director's decision shall be withdrawn and the matter remanded to afford the applicant an opportunity to file the Form I-160 application for waiver of inadmissibility. After adjudicating the waiver application, the director shall complete the adjudication of the temporary residence application.

**ORDER:** The director's decision is withdrawn. This matter is remanded to the director for additional action commensurate with the directives of this opinion.