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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:

MSC 05 335 11116

Office: NEW YORK

Date: **JUL 24 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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, New York. 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, on August 31, 2005. The director denied the application on June 11, 2007, because the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant filed an appeal from the director's decision on July 2, 2007. On appeal, the applicant submits a brief and additional documentation.

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).

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).

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.

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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he resided in the United States in an unlawful status throughout the requisite time period.

Based on a review of the record, the applicant has established her residence and presence in the United States since in or after 1991. With regard to the time period from prior to January 1, 1982 through 1991, the applicant has submitted the following documentation in support of his application:

1. An employment letter from [REDACTED] stating that the applicant was employed by him at Bahri Halal Meat Market in Staten Island, New York, from July 1981 to December 1990, except for the time period from December 10, 1986 to January 11, 1987, when the applicant traveled to Sri Lanka to visit his seriously ill mother.
2. An affidavit from [REDACTED] stating that while he was living in Sri Lanka, he knew the applicant was living in the United States since July 1981. Mr.

states that once he moved to the United States in August 1986, he and the applicant shared accommodations until December 1987.

3. An affidavit from [REDACTED] stating that he had known the applicant since July 1981 and that the applicant traveled to Sri Lanka at the end of December 1990.
4. An affidavit from [REDACTED] stating that the applicant visited him in Canada from January 7, 1987, until his departure to New York on January 9, 1987.
5. Documentation from the Internal Revenue Service (IRS) dated in or after 2005.
6. A partially illegible photocopy of a money transfer receipt dated December 18, 1989.
7. A photocopy of an envelope showing the applicant as sender to an address in Sri Lanka, postmarked in Portland, Oregon, on March 17, 1982.

The employment letter provided in No. 1, above, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; or declare whether the information was taken from company records (and identify the location of such company records and state whether such records are accessible) or, in the alternative, state the reason why such records are unavailable. Neither [REDACTED] (No. 2) nor [REDACTED] (No. 4) are able to personally attest to the applicant's entry into the United States prior to January 1, 1982 and the affidavit from [REDACTED] (No. 3) is vague as to how he dates his acquaintance with the applicant, how often and under what circumstances he had contact with the applicant, and this statement lacks details that would lend credibility to his claims. It is unclear as to what basis the affiants in Nos. 2, 3, and 4 claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite period. As such, the statements can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States since on or before January 1, 1982. Nos. 5 and 6 are dated 1989 and 2005 and carry no evidentiary weight regarding his alleged entry prior to January 1, 1982. With regard to No. 7, the photocopy submitted does not clearly establish that the postmark corresponds to the "From" and "To" addresses. Furthermore, there is no explanation as to the applicant's presence in Portland, Oregon, in March 1982 while he was allegedly working in Staten Island, New York, for [REDACTED] who had stated the applicant had only been absent from his employment since July 1981 for the period from December 10, 1986, to January 11, 1987, in order to travel to Sri Lanka.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries; children's birth certificates; bank book transactions; letters of correspondence (other than the photocopy in No. 7, above); a Social Security card; automobile, contract, and insurance

documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists primarily of third-party affidavits (“other relevant documentation”). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period, and are not supported by any corroborative documentation.

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 paucity of the documentation submitted, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States throughout 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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