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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 06 068 13239

Office: NEW YORK

Date: JUN 02 2009

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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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. 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. The director determined that 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the applicant's response to a Notice Of Intent To Deny (NOID) did not overcome the reasons set forth in the NOID for denial.

On appeal, counsel submits additional evidence and states that the evidence should be considered and the application approved.

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:

- The applicant submitted a sworn statement from [REDACTED] which states that he has known the applicant since June of 1981, and that the two met when [REDACTED] attended an outreach Christian service together.

The witness statement provided does not provide detailed evidence establishing how the witness knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witness could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period covered by the applicant’s Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship,

have knowledge of the facts asserted. The witness statement submitted by the applicant, therefore, is not deemed probative and is of little evidentiary value.

- The applicant submitted two statements from the [REDACTED] on the letterhead of the Church of St. Paul. The first is dated June 1, 2006 and states that “according to church records,” the applicant practiced his Roman Catholic Faith in the United States from 1983 – 1990. [REDACTED] states that the applicant is known to him personally. By letter dated June 27, 2006, [REDACTED] states that in reference to his June 1, 2006 letter, the “church records” he was referring to consisted of an authorized document from the Archbishop of Fuzhou in China. A copy of the referenced document was not furnished by [REDACTED]
- On appeal, the applicant submitted a letter from [REDACTED] Director, Cardinal – priest, of the Catholic Church in Fu Zhou Archdiocese, [REDACTED]. In that document, [REDACTED] states that the applicant was baptized in China and received Confession, Eucharist and Sacrament. [REDACTED] then states that the applicant has been in the United States from 1981 – 1991.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant’s residence by letter which:
  - (A) Identifies applicant by name;
  - (B) Is signed by an official (whose title is shown);
  - (C) Shows inclusive dates of membership;
  - (D) States the address where applicant resided during membership period;
  - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
  - (F) Establishes how the author knows the applicant; and
  - (G) Establishes the origin of the information being attested to.

The attestations presented by [REDACTED] do not comply with the regulation in that they do not show inclusive dates of the applicant’s membership in any organization. The letter from [REDACTED] states only that the applicant practiced his Catholic faith in the United States from 1983 - 1990, and that [REDACTED] personally knows the applicant. The letter does not state that the applicant was a member of [REDACTED]’s church, nor does it provide the applicant’s address

during any period of membership. A second letter from [REDACTED] states that the content of the first letter is based on church records which consist of a document from the Archbishop of Fuzhou in China. The content of any such record is not provided, nor does [REDACTED] explain how the Archbishop of Fuzhou in China could have knowledge of the applicant's religious activities in the United States during the requisite period. The statement is of no evidentiary value.

The attestation from [REDACTED], Director, Cardinal – priest, of the Catholic Church in Fu Zhou Archdiocese, [REDACTED], also fails to comply with 8 C.F.R. § 245a.2(d)(3)(v) in that it does not: provide the applicant's United States address during any period of church membership relative to the requisite period; show dates of church membership for any religious organization in the United States during the requisite period; establish how [REDACTED] knows the applicant; and establish the origin of the information being attested to. The document is of no evidentiary value.

Further, the record contains material inconsistencies relative to the applicant's activities and whereabouts during the requisite period. The applicant states on the Form I-687 that he resided in the United States throughout the requisite period. The applicant, however, also submitted a Form I-589 which states that he arrived in the United States on April 22, 1993. This information is confirmed in testimony before a United States Immigration Judge, and on a Form G – 325A (Biographic Information form signed by the applicant) wherein the applicant states that he lived in China from January of 1973 until December of 1992. These inconsistencies are not explained in the record and cast doubt on the credibility of all evidence of record. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the material inconsistencies in the record noted above, seriously detract from the credibility of the applicant's 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 applicant's reliance upon documents with minimal probative value, and the inconsistencies noted of record, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.