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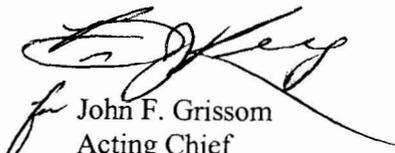
IN RE: Applicant:

APPLICATION: Application for Temporary Resident Status under 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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Orlando, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he was continuously resident in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal the applicant asserts that he has lived in the United States since 1981 and resubmits some documentation that was already in the record.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* 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. *See* 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that the applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Ghana who claims to have lived in the United States since April 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on December 7, 2005.

On March 7, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the applicant had provided conflicting information about where he lived in the United States during the years 1983-1990, and that there was no evidence that the applicant entered the United States and began residing in the country illegally before January 1, 1982. The applicant was granted 33 days to provide additional evidence.

Counsel responded to the NOID by citing a previously submitted affidavit from a friend of the applicant who provided information about the applicant’s residence in the United States as of 1981 and where he lived during the 1980s. Counsel also cited other documentation in the record, including a Social Security Statement of the applicant’s, as consistent with the applicant’s claim to have begun his continuous unlawful residence in the United States before January 1, 1982.

On April 16, 2007, the director issued a Notice of Decision denying the application. The director ruled that the applicant’s response to the NOID was not sufficient to overcome the grounds for denial.

On appeal the applicant reiterates his claim to have resided continuously in the United States since 1981. He resubmits copies of two previously submitted documents; including (1) a computer printout from the Internal Revenue Service, dated June 16, 2005, which appears to show that 1986 was the first year for which the applicant paid federal taxes in the United States, and (2) a diploma from the Lincoln Technical Institute in Capitol Heights, Maryland, issued to

the applicant on October 3, 1986, for satisfactory completion of a course in Air Conditioning, Refrigeration and Heating Systems.

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).

In addition to the materials resubmitted on appeal, the record includes two Social Security Statements, issued to the applicant in 2005 and 2006, which list the applicant's taxed Social Security and Medicare earnings in every year from 1985 through 2005. Based on the foregoing evidence, the AAO concludes that the applicant has established his continuous residence in the United States from 1985 onward.

The only evidence of the applicant's residence in the United States before 1985, however, is an affidavit by [REDACTED], a resident of Woodbridge, Virginia, dated September 7, 2005, stating that he had known the applicant since 1981, when the applicant lived and worked in Virginia. The only information provided by [REDACTED] is that the applicant worked at a Denny's restaurant in Alexandria, Virginia, and moved to Florida in 1990. [REDACTED] did not indicate what years the applicant worked at Denny's, and provided no further details about where the applicant lived and worked during the 1980s, or any other information about the applicant's life in the United States. [REDACTED] did not describe the circumstances of meeting the applicant, or the nature and extent of their interaction over the years. Nor is [REDACTED] affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of his personal relationship with the applicant during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of attempted filing for temporary resident status during the original one-year application period that ended on May 4, 1988.

On his Form I-687, the applicant stated that he worked at Denny's as a dishwasher from June 1982 through August 1986. There is no documentation from Denny's, however, such as earnings statements, tax withholding statements, or an official letter from the company confirming that the applicant worked at Denny's during the years 1982-1986. The same applies for the applicant's claimed employment (on his Form I-687) at the Casa Maria restaurant, also in Alexandria, Virginia, from June 1981 to June 1982. There is no documentation of this employment from Casa Maria.

Based on the foregoing analysis of the evidence, and the absence of any persuasive evidence covering the years 1981-1984, the AAO concludes that the applicant has not established that his continuous unlawful residence in the United States began before 1985. Therefore, the applicant

has not established that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

The appeal will be dismissed, and the application denied.

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