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[REDACTED]

FILE: [REDACTED] Office: CHICAGO  
MSC 05 329 11325  
MSC 06 210 12263 – Appeal

Date: JUN 10 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:

[REDACTED]

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, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On appeal, counsel for the applicant asserts that the reviewing officer failed to review all the documentation presented and that no reference was made to many of the documents presented in support of the application. Counsel further asserts that due to the passage of time, the applicant can not be held accountable for the fact that certain business entities that provided documentation in support of the applicant's claims no longer exist.

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.

The record shows that the applicant submitted the current Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on August 25, 2005. The director denied the application on March 14, 2006. Counsel for the applicant filed an appeal from that decision on April 12, 2006. On appeal, counsel stated that he would submit a brief in support of the appeal within 30 days. To date, no additional brief in support of the appeal of the denial of the Form I-687 has been received. However, on October 5, 2006, counsel did submit a brief in support of a denial, dated September 6, 2006, of the applicant’s Form I-485, Application to Register Permanent Resident or Adjust Status.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. A review of the record reflects that counsel has provided no new evidence to overcome the well-founded and logical conclusions the director reached based on the evidence submitted contained in the record and thoroughly addressed by the director. The appeal must therefore be summarily dismissed.

It is noted that, beyond the decision of the director, the applicant has failed to submit evidence of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

It is further noted that a Form I-130, Petition for Alien Relative, filed on the applicant’s behalf by [REDACTED] to qualify the applicant as the brother of a United States citizen, was denied due to abandonment on June 22, 1999.

**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.