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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
MSC 06 101 17387

Office: SAN DIEGO

Date:

**JUN 24 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:

SELF-REPRESENTED

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 "John F. 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, San Diego. 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant states that he has continuously resided in the United States since 1979.

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).

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) 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).

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 the evidence

for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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.

The pertinent evidence in the record is described below.

1. The applicant’s letter from [REDACTED] in Calexico, California, who states [REDACTED] was his patient during the period of 1979 until “mid 80’s”
2. The applicant’s summer school report card from Saint Catherine’s Military School in Anaheim, California, for 1981 indicating he completed 5<sup>th</sup> grade in June.
3. The applicant’s certificate of merit for hard work in English class from Saint Catherine’s Military School in Anaheim, California, for summer session 1982.
4. The applicant’s Experian credit report showing he held an American Express card from November 1984 until November 29, 2001 and showing his earliest residence in the United States was in Chula Vista, California, from June 1993 to April 2003.
5. The applicant’s letter from [REDACTED] Director of Admissions for St. Catherine’s Military Academy stating that although the Academy can not locate the applicant’s school records for the years from 1979 through 1984, the documents he has presented from the school are valid. She further states that to the best of her knowledge, the applicant was a student at the Academy.
6. A letter from [REDACTED] who states that the applicant lived with his parents in Calexico, California, from 1979 until the “mid 80’s” and that he was aware that [REDACTED] was attending a boarding school in Anaheim.
7. A letter from [REDACTED] who states he rented a property in Calexico, California, to the applicant’s father from 1979 until late 1986.
8. A letter from [REDACTED] who states he knows the applicant has resided in the United States since 1986.
9. A notarized statement from [REDACTED] who states he rented a room to the applicant from May 1986 until 1989 in San Diego, California, in exchange for his labor plus a

small salary. She further states that she then gave him the position of manager of her eight unit apartment complex and increased his salary.

10. The applicant's Form I-586, Mexican Border Crossing Card, approved on February 26, 1985.

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).

The applicant could have been a patient of [REDACTED], attended two sessions of summer school, and held an American Express card (Items # 1 through # 4 above) as a person permitted to cross the Mexican border without having resided in the United States from 1979 through the mid 1980's. The letter from [REDACTED] (Item # 5) indicating the nonexistence of the applicant's school records and verifying "the documents he has presented from the school" is of little value in establishing his continuous residence during the requisite period.

On his Form I-687, the applicant stated his first residence in the United States was in Liveoak, California, from 1986 to 1988. The letters from [REDACTED] and the notarized statement from [REDACTED] (Items # 6 through # 9) are of little value because the applicant did not claim to have resided in this country during the periods specified by them. The issuance of the applicant's Form I-586 (Item # 10) in 1985 was partially based on the applicant's claim that he was a resident of Mexico at that time.

On his Form I-687, he also stated that his first employment in the United States was in 1998. The notarized statement from [REDACTED] (Item # 8) is of little value because the applicant listed no employment in the United States from 1986 until 1989. Additionally, the employment verification statement does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence

during the requisite period. The applicant's asserted employment and residential histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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