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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  
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Services

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[REDACTED]

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FILE: [REDACTED] Office: FAIRFAX  
[REDACTED] - consolidated herein]  
MSC 05 133 10468

Date: **MAR 27 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, Fairfax, Virginia. 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 submits a brief.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The record shows that the applicant submitted a first Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on July 20, 1991. In connection with that application, the applicant indicated he initially entered the United States without inspection in September 1980, and had departed the United States on only one occasion - in December 1987 in order to visit friends in Mexico. The applicant submitted the current Form I-687 on February 10, 2005. The applicant was interviewed on July 8, 2005, and on January 19, 2006, the director denied the application.

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 for the duration of the requisite period. In support of his claim, the applicant has submitted the following documentation throughout the application process:

Employment letters:

1. A letter from [REDACTED] stating that the applicant was employed as an apprentice mechanic and supervisor from January 12, 1981 to April 16, 1984.
2. A letter from [REDACTED] stating that the applicant had been employed as a groundsman and supervisor from June 1984 to July 1988.

Organization letters:

3. A photocopy of a letter from the [REDACTED] Development Association of U.S.A., Inc., in Alexandria, Virginia, attesting to the applicant's being an active member.
4. A photocopy of a letter from [REDACTED] International in Manassas, Virginia, stating that the applicant had been a member since January 2, 1981.

Affidavits from acquaintances:

5. A fill-in-the-blank affidavit from [REDACTED] stating the applicant is his friend and listing the applicant's addresses in the United States from January 1980 through September 1990. Mr. [REDACTED] also submitted a letter stating that on December 7, 1980, he traveled with the applicant to Mexico from December 7, 1980, to December 14, 1980.
6. A photocopy of an affidavit from [REDACTED] the applicant's sister, stating the applicant lived with her in Alexandria, Virginia, from January 12, 1981, to June 10, 1983.
7. A photocopy of an affidavit from [REDACTED] stating the applicant came to the United States in May 1980 and used to live in Alexandria, Virginia.

Other documentation:

8. Photocopies of letters and envelopes addressed to the applicant in the United States dated March 12, 1980; December 11, 1981; and, June 6, 1986.

The employment letters provided in Nos. 1 and 2, above, do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; 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 organization letters in Nos. 3 and 4, above, do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that they fail to provide the address(es) where the applicant resided throughout the membership period and do not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records). No. 3 also does not indicate the applicant's inclusive dates of membership. Furthermore, the applicant did not claim to be a member of either organization at the time of filing his Forms I-687 in 1991 and 2005.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The affidavits and letter from [REDACTED] and [REDACTED] lack details as to how they first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant throughout the requisite period. The affidavit from the applicant's sister is not supported by evidence that she actually resided in the United States during the time period attested to. As such, they can only be afforded minimal weight as evidence of the applicant's residence and presence.

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.

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