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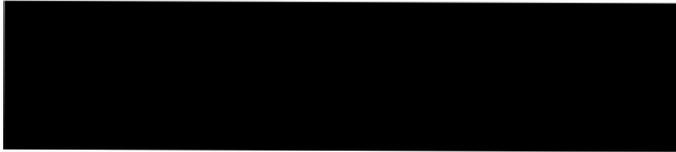
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: HOUSTON  
[REDACTED] consolidated herein]  
MSC 05 183 10690

Date: **NOV 20 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. 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.

Perry Rhew  
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, Houston, Texas. 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, the applicant submits a statement and additional documentation.

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 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.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on April 1, 2005. The applicant claims to have initially entered the United States without inspection on September 1, 1981 (when he was eleven years-old) and to have resided continuously in the United States in unlawful status from that date of entry through to the date of filing his application except for two short trips to Mexico in April and December 1982. In support of his application, the applicant submitted affidavits from individuals attesting to have known the applicant throughout various time periods. The only affiants attesting to the applicant's presence in the United States since the 1980's were

and . A United States Citizenship and Immigration Services (USCIS) officer attempted to contact these individuals on December 26, 2007, but was only able to contact and – none of whom were able to satisfactorily confirm the attestations made in their affidavits.

On December 31, 2007, the director issued a Notice of Intent to Deny (NOID) the application. In the NOID, the director noted the discrepancies discovered in the three above-mentioned affiants' affidavits and testimony. The director also noted that the record contained documentation signed by the applicant in December 1997 indicating that he had resided in Mexico from birth through September 1988. The director found that these discrepancies called into question the applicant's credibility regarding his claims of having continuously resided in

the United States in an unlawful status from prior to January 1, 1982, through the date of filing his application. The director afforded the applicant 30 days in which to respond to the NOID. The director determined that the applicant had failed to respond to the NOID and denied the application on May 13, 2008.

On appeal, the applicant submits documentation indicating that he had, in fact, responded to the NOID on January 30, 2008, by providing additional affidavits from [REDACTED] and [REDACTED] reaffirming the attestations contained in their earlier affidavits that they had personal knowledge the applicant had resided in the United States since early 1981. The applicant also attempts to explain that the information on the documentation contained in the record that was signed and filed by him in December 1997 - wherein he indicated he had resided in Mexico from birth through September 1988 - was submitted by an employee of a subcontractor for whom he worked at the time. He asserts that the employee gave him blank documents to sign, claiming that they were insurance forms and permits for employment with the company.

The applicant's assertions regarding the documentation contained in the record are not credible. The applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, and supporting Form G-325, Biographic Information sheet in December 1997. Both documents contain detailed information regarding the applicant's life and residence in Mexico and were signed by him under penalty of perjury. Both documents clearly list the applicant as having lived in Mexico from birth through September 1988 when he moved to Texas.

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).

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 documentation submitted, and the discrepancies noted in the record, 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.

It is noted that as a result of being fingerprinted in connection with this application, United States Citizenship and Immigration Services (USCIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested by the Police Department in Houston, Texas, on March 6, 1993, and charged with "Carrying a Pistol." In any future proceedings before USCIS, the applicant must submit evidence of the final court disposition of this arrest and any other charges against him.

It is further noted that the applicant was ordered removed from the United States by an Immigration Judge (IJ) on June 3, 1998 (under alien registration number [REDACTED]). That order remains outstanding.

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.