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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: OCT 08 2009
MSC 06 090 13093

IN RE: Applicant: [redacted]

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.

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) 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 Chicago, Illinois. 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 resided continuously in the United States in an unlawful status from before January 1, 1982, and was continuously physically present in the United States from November 6, 1986, through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director did not give due weight to the evidence in the record, and requests that the decision be overturned.

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.

An applicant for temporary resident status has the burden to establish 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 an 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 Pakistan who claims to have lived in the United States since January 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 29, 2005. At that time the record included the following evidence of the applicant's residence and physical presence in the United States during the 1980s:

- A notarized statement by a resident of Montebello, California, dated December 7, 2003, indicating that the applicant performed yardwork and housework for her mother during 1986.

- Three photographs taken in August 1986.

On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) indicating that the evidence of record did not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods under the Act.

In response the applicant submitted photocopies of his previously submitted evidence, in addition to the following additional documents:

- A statement by a resident of Bloomfield, New Jersey, dated February 13, 2006, indicating that he knows the applicant has lived in the United States since 1981, that he met the applicant in 1982, and that the two socialize frequently.

- A notarized statement by a resident of Martinsburg, West Virginia, dated February 15, 2006, indicating that he met the applicant in 1981, knows that the applicant has lived in the United States since that year, and that the two have socialized over the years at festivities and Indian/Pakistani gatherings in Palmdale, California.

On August 8, 2007, the director issued a Decision denying the application. The director cited the documentation in the record and determined that it did not establish the applicant's continuous residence and physical presence in the United States during the requisite periods to qualify for temporary resident status under the Act.

Counsel filed a timely appeal (Form I-694), asserting that the director did not give due weight to the documentation submitted by the applicant, and urging that the AAO overturn the decision.

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 central issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate 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. The AAO determines that he has not.

The only documentation in the record dating from the 1980s are the three photographs which bear markings indicating that they were taken on August 15, 1986, August 18, 1986, and August 22, 1986. The applicant implies that the individual photographed in each of the pictures is him, though he does not specifically say so. In any event, the applicant does not state where the photos were taken, and there are no clear indicators of geographic location in the photos. Even if the photos were taken in the United States, they would not establish in and of themselves that the applicant was residing in the country in 1986, as opposed to visiting. For the reasons discussed above, the photographs have little probative value. They are not persuasive evidence of the applicant's residence in the United States during 1986, much less back to 1981.

The only other evidence of the applicant's residence in the United States during the 1980s are the statements of three individuals who claim to have known the applicant since 1981, 1982, and 1986, respectively. The statements are minimalist documents with little personal input by the authors. Considering how long they claim to have known the applicant, it is remarkable how little information the individuals provide about him,. They offer few if any details about how they met the applicant, where he lived and worked during the 1980s, and the nature and extent of

their interaction with the applicant during the 1980s. In fact, does not mention any contact at all with the applicant outside the year 1986. In view of these substantive shortcomings, the three statements in the record have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish 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 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.