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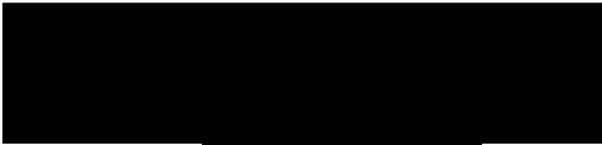
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted] Office: DALLAS
MSC 05 260 14496

Date: **OCT 23 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:



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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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, Dallas, 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director also determined that the applicant had not established that he is a class member of the CSS/Newman (LULAC) lawsuits.

On appeal, counsel for the applicant submits a brief asserting that the applicant has submitted sufficient evidence to establish her continuous unlawful residence in the United States and that she qualifies as a class member.

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 AAO notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Therefore, the director's decision to deny the application on the ground that the applicant did not establish that she is a class member will be withdrawn.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that she resided in the United States in an unlawful status throughout the requisite time period.

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 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 June 17, 2005. The director denied the application on November 24, 2007.

The applicant claims to have continuously resided in the United States in an unlawful status since her initial entry in November 1981. In support of her claims, the applicant submitted the following documentation:

1. A declaration from [REDACTED] stating she met the applicant when she (the applicant) began living with a neighbor in November 1981, the applicant often

- baby-sat for her, and that she would pick up the applicant (who worked at Publix) on her way home from work because the applicant did not have a car.
2. A declaration from [REDACTED] stating that she had known the applicant for approximately 30 years and that the applicant came to the United States legally through the Canadian border as a visitor in November 1981, and that when the applicant “came with her mother and sister to attend a Christian Youth Camp, in New York city the summer of 1982” she flew to New York to visit them at that time. She further states that when the applicant’s mother returned to Canada, the applicant remained in the United States with a family friend from Kenya who lived in Bronx, New York, where [REDACTED] visited the applicant and that the applicant visited her in Dallas, Texas.
 3. A declaration from [REDACTED] stating she had known the applicant since she [REDACTED] was 3 years old – that she met the applicant in New York in December 1981.
 4. A declaration from [REDACTED] stating she met the applicant in Washington, D.C. during the summer of 1983.
 5. A declaration from [REDACTED] stating he met the applicant in New York in early 1984.
 6. A declaration from [REDACTED] stating that he met the applicant on an unspecified date at a community gathering in Bronx, New York, when he was seven years old, and that the applicant continues to stay in touch with his family.
 7. A declaration from [REDACTED] stating she met the applicant in New York during the summer of 1982. A letter from [REDACTED] (no address given) stating the applicant had been employed since December 2005.
 8. A letter from Montgomery College stating the applicant was enrolled from July 1987 through December 1989.

For the time period from prior to January 1, 1982, through 1987, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children’s birth certificates, bank book transactions, letters of correspondence, a Social Security card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits (“other relevant documentation”).

Several attempts were made by United States Citizenship and Immigration Services (USCIS) to telephonically contact [REDACTED] (No. 1, above) and [REDACTED] (No. 6), but there was no

answer. An attempt to contact [REDACTED] (No. 3) revealed that the telephone number provided had been disconnected. [REDACTED] (No. 7) did not provide a telephone number for contact. When contacted, [REDACTED] (No. 2) indicated that she had known the applicant for about 15 years, could not remember the specific year she met her - but that it was in the 1990's, and that she thought the applicant worked for '[REDACTED]' but did not know any other information about her or her previous employment.

Given the paucity of credible and verifiable documentation presented, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, her continuous residence in an unlawful status in the United States throughout the requisite time period from prior to January 1, 1982, through the date she attempted to file a Form I-687, 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.

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.