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U.S. Citizenship and Immigration Services
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[Redacted]

FILE: [Redacted] Office: NEWARK
MSC 06 101 15268

Date: **SEP 11 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. 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.

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, Newark. 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, counsel states that the applicant is eligible for the benefit sought based on the evidence that has been submitted for the record. Counsel submits four envelopes for consideration that were addressed to the applicant at a residence in New York from a person residing in Brazil.

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)(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 petitioner 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 or petitioner 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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Five envelopes addressed to the applicant at a residence in New York from a person residing in Brazil.
2. An Affidavit of Witness statement accompanied by a “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants” and a letter from [REDACTED] who states he knows the applicant has resided in the United States since June 1982.
3. An Affidavit of Witness statement accompanied by a “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants” from [REDACTED] who states she knows the applicant has resided in the United States since 1986.
4. A “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants” from [REDACTED] who states she knows the applicant has resided in the United States since June 1986.
5. The applicant’s Republic of Brazil passport issued to him in his home country on January 16, 1986.
6. The applicant’s Form I-94, Record of Arrival, showing he was admitted to the United States as a nonimmigrant visitor on July 30, 1987.

The envelopes (Item # 1 above) do not bear any indications that they ever entered the United States postal system. [REDACTED] and [REDACTED] (Items # 2 through #4) claim to have known the applicant for a substantial length of time, going back to 1982. However, these documents are not accompanied by any evidence such as photographs, letters or other documents establishing the affiant’s personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the

applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. On his Form I-687 the applicant does not list that he was absent from the United States on January 16, 1986, the date his passport was issued to him in Brazil (Item # 5). Nor does he indicate on his Form I-687 that he was abroad just prior to being admitted to the United States as a nonimmigrant visitor on July 30, 1987 (Item # 6). It is noted that his entry as a nonimmigrant visitor effectively broke the continuity of any illegal continuous residence and physical presence claimed by the applicant.

The record contains a Form I-213, Record of Deportable Alien, dated December 21, 1988, indicating that the applicant was apprehended near San Ysidro, California, shortly after he illegally entered the United States. At his interview with a border patrol officer, the applicant stated that he had last entered the United States in January of 1987 as a B-2 nonimmigrant visitor and that he spent approximately four months in the United States before returning to Brazil.

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 applicant has failed to offer any explanation for the substantive discrepancies.

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.

In removal proceedings held "in absentia" on April 17, 1989, an Immigration Judge in Boston, Massachusetts, ordered the applicant deported to Brazil.

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