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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**U.S. Citizenship  
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FILE: [REDACTED]  
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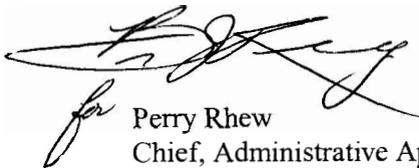
IN RE: Applicant: [REDACTED]

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: Self-represented

**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.

  
for 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 Dallas, Texas. 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 the applicant submits some additional documentation.

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(d)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since November 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 October 18, 2005. As evidence of his residence and physical presence in the United States during the requisite time periods of the 1980s the applicant submitted the following:

- A declaration by [REDACTED], a resident of Dallas, Texas, dated September 4, 2005, indicating that he met the applicant around November 16, 1981, in Dallas, Texas, that the applicant lived at [REDACTED] in Dallas from November 1981 to May 1983, that during this time the two worked together as self-employed construction workers, and that [REDACTED] picked up the applicant every day. According to [REDACTED], the applicant lived at [REDACTED] from June 1983 to November 1985, in December 1985 moved again to [REDACTED] also in Dallas, later moved to [REDACTED] in Dallas, and made a short visit back to Mexico in June 1987. Mr. [REDACTED] indicated that he and the applicant did odd jobs together over the years and socialized a lot, having cookouts in the summer and spending the holidays together.

On November 28, 2005, 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 two additional declarations from Dallas residents, [REDACTED] and [REDACTED] dated January 10 and 23, 2006, respectively, identical in format and virtually identical in language to the declaration previously submitted by [REDACTED].

On August 8, 2007, the director issued a Decision denying the application. The director reviewed the declarations in the record, along with passport evidence showing that the applicant was issued a B-2 visa on December 5, 1988 and was admitted to the United States as a B-2 visitor in 1995, and determined that this evidence 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.

The applicant filed a timely appeal (Form I-694), accompanied by two further documents from and [REDACTED] and [REDACTED], prepared as affidavits, dated August 16 and 22, 2007, respectively. The affiants provided their phone numbers, but no additional information about the applicant during the 1980s. The applicant resubmitted copies of passport evidence confirming that he was issued a passport in Mexico on October 24, 1988, followed by a B-2 visa by the U.S. Consulate in Matamoros on December 5, 1988, and that he was admitted to the United States on August 29, 1995 for a six-month stay on a B-2 visa.

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 applicant has submitted no contemporary documentation from the 1980s demonstrating that he resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since November 1981, it is noteworthy that he is unable to produce a solitary document from the United States dating from that decade.

The only evidence of the applicant's residence in the United States during the 1980s are the declarations and affidavits of three individuals – [REDACTED] and [REDACTED] – who claim to have known the applicant since 1981. The declarations submitted with the application and in response to the NOID have identical fill-in-the-blank formats, and the information supplied by the three individuals is also nearly identical in content and language. In short, there is not much personal input by the three authors. Furthermore, considering how long they claim to have known the applicant, it is remarkable how little information the authors provide about him. They provide no details about how they met the applicant in 1981, for example, and only vague and general information about the nature and extent of their interaction

with the applicant in the following years. The affidavits submitted by [REDACTED] and [REDACTED] on appeal do not offer any additional information about the applicant to fill in these evidentiary blanks. Nor does the record include any documentary evidence – such as photographs or letters – of the applicant’s personal relationship with any of the three individuals in the United States during the 1980s. In view of these substantive shortcomings, the declarations and affidavits 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.