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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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Services

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[Redacted]

FILE:

[Redacted]

Office

[Redacted]

Date: **JUL 06 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you.

[Redacted]

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 Los Angeles, California. 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 his continuous unlawful residence in the United States from before January 1, 1982 to May 4, 1988.

Applicants for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish their 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). Applicants must also establish their 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.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.2(h)(1)(i), as follows: “[A]n applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing the application, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 April 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 July 12, 2005.

On November 2, 2005, the director issued a Notice of Intent to Deny (NOID). The director indicated that the applicant was statutorily ineligible for temporary resident status, referencing a statement by the applicant that he did not file for legalization during the original application period due to a financial problem. The director also indicated that the documentation submitted by the applicant did not establish that he entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988. The applicant was granted 30 days to explain discrepancies in the record or rebut adverse information.

In response the applicant submitted an affidavit from his brother, dated November 21, 2005, who stated that the applicant does not have any documentation from the 1980s, but claimed that he and his brother worked together at a carpet store (at an unstated location) during the time frame of January 1982 to November 1986.

On March 10, 2006, the director issued a Notice of Decision denying the application. The director stated that the evidence submitted in response to the NOID failed to overcome the grounds for denial. The director indicated that the applicant could file an appeal with a Special Master appointed under the terms of the CSS/Newman Settlement Agreements. The applicant did so within the requisite 30-day filing period.

On July 31, 2007, U.S. Citizenship and Immigration Services (USCIS) issued an Amendment to Decision, indicating that the Los Angeles District Office erred in granting the applicant Special Master appeal rights because the decision on the applicant's case was not a Class Membership denial. The proper venue for an appeal in this case, USCIS advised, was the AAO. The applicant was directed to complete a new Notice of Appeal (Form I-694) and mail it to a USCIS office in Chicago. The applicant did so, and his new appeal was filed on August 17, 2007.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On January 15, 2010, the Chief, Administrative Appeals Office, sent the applicant an extensive letter discussing the evidence of record in detail. The letter cited inconsistent statements by the applicant as to when he first entered the United States, his employment and residential addresses in the United States during the 1980s, and his trips outside the United States during the 1980s. The letter surveyed various documents submitted by the applicant – including photocopied envelopes and affidavits from individuals who claim to have employed, resided with, or otherwise known the applicant during the 1980s. It noted that some of the documents contained conflicting information and that all lacked sufficient substantive detail to constitute persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988. The applicant was granted 33 days to rebut the discrepancies in the record and to submit additional evidence.

The applicant responded by letter, dated January 28, 2010, stating that he had no further documentation to submit since he lived with friends during his early years in the United States, shared expenses, did not have any receipts for living expenses because nothing was in his name, and worked on a cash basis. The applicant resubmitted photocopies of three brief affidavits, dated in 2004, that were already in the record.

The issue in this proceeding is whether the evidence of record is sufficiently probative and credible to establish that the applicant entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that the evidence does not meet this threshold.

The AAO notes that the applicant filed an earlier application for permanent resident status under section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

The application for permanent resident status (MSC 01 286 60049), filed in July 2001, was denied by the director in Los Angeles on April 26, 2004. The director referred to various evidentiary inconsistencies which had not been refuted or explained by the applicant, and determined that the applicant had failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The applicant filed an appeal (AAO 04 156 50012), which was dismissed by the AAO Director on June 10, 2004. In this decision the AAO surveyed all the documentation of record – which was virtually identical with the documentation of record in the subsequent application for temporary resident status. (The affidavit by the applicant's brother in November 2005 is the only additional document in the current proceeding). The AAO Director discussed myriad evidentiary inconsistencies and substantive deficiencies in the documents submitted by the applicant, and concluded that they lacked overall credibility. The appeal was dismissed on the ground that the applicant failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The AAO's analysis of the evidence in its adjudication of the foregoing appeal under the LIFE Act is equally applicable to the appeal currently under consideration. In its current decision, therefore, the AAO hereby incorporates by reference the pertinent language in its 2004 decision on the application for permanent resident status.

For the reasons discussed above, the AAO concludes 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 an application for temporary resident status during the initial 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.