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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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[redacted]

MAR 1 9 2010

FILE: [redacted] Office: LEE'S SUMMIT Date:
MSC 06 090 11438

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.

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, Lee's Summit, Missouri. 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:

> The applicant did not receive a notice for interview; neither did he receive the letter of denial. Since filing I-687, the applicant has never received anything except the receipt and EAD though she [sic] changed her [sic] address with USCIS through an attorney.

The regulations provide the following interview and fingerprint requirements for applications in this category:

> *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of an employment authorization document and Form I-688. Each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

The Form I-688 referred to is the card signifying temporary resident status that was issued to legalized aliens. It served as an employment authorization card as well. It was commonly referred to by the alien applicants as a work card or work permit. As the approval of a Form I-688 is not an issue in this case, there is no regulatory requirement that he be interviewed and/or fingerprinted prior to the final resolution of this application.

The record reflects that the director's Notice of Intent to Deny dated August 6, 2007 and his denial decision dated September 12, 2007, were sent to the applicant's address of record. On December 8, 2009, a copy of the director's August 6, 2007, Notice of Intent to Deny and his September 12, 2007, Notice of Decision were sent to both the applicant and counsel. A response was received by AAO on January 4, 2010, and has been incorporated into the record.

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. Notarized statements from and who state they know the applicant has resided in the United States since 1981.

2. An unsigned statement accompanied by an unsigned and uncertified "notarial" certificate and Chinese language statements from the applicant's father residing in China, who states his son has resided in the United States since 1981.

3. Unsigned statements accompanied by unsigned and uncertified "notarial" certificates and Chinese language statements from and all residing in China, who state they know the applicant has resided in the United States since 1981.

4. An apartment lease signed by the applicant and his landlord for an apartment in Flushing, New York, beginning in April 1981 and ending in April 1986.

The persons providing the statements (Item # 1 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' 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. He submits four unsigned statements and four uncertified "notarial" certificates accompanied by statements in Chinese from and Items # 2 and #3) in support of his application. However, since the applicant failed to submit certified English translations of these statements, the AAO cannot determine whether these documents match the unsigned statements submitted or support the applicant's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence consisting of unsigned statements and documents that are not translated is not probative and will not be accorded any weight in this proceeding. The apartment lease (Item # 4) is not sufficiently probative to establish the applicant's continuous residence in the United States since before January 1, 1982 through the requisite time period.

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 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.

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