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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

L1

[redacted]

DATE: DEC 0 1 2011 Office: LOS ANGELES FILE: [redacted]

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:

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.

Elizabeth McCormack

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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on November 15, 2005. On December 11, 2006, the director denied the application noting that the applicant failed to submit all of the evidence requested in the director's Request for Evidence (RFE). Thus, the director indicated that the application was abandoned. On February 22, 2007, the applicant filed a motion to reopen and submitted additional evidence. On March 5, 2007, the director dismissed the applicant's motion to reopen stating that the applicant failed to demonstrate that the director had denied the application in error.

On October 12, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. [1] The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, the applicant states that he has lived in the United States since 1981.

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

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 245(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

[1] On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff,* Case 2:86-cv-01343-LKK-JFM.

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).

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).

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 either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The record includes the following documents in support of the applicant's claim of residence in the United States during the requisite period:

- A letter dated January 10, 2007, on Newhall School District letterhead signed by [redacted] Assistant Superintendent of Personnel verifying that the applicant attended Newhall Elementary School from 1981 to 1986;
- A letter dated October 28, 2005, on Placerita Junior High School signed by [redacted]

principal confirming that the applicant was a student at during the 1986 – 1987 school year;

- A letter dated November 13, 2006, on signed by registrar confirming that the applicant was a student at during the 1986 – 1987 school year;
- A copy of a Migrant Student Enrollment and Verification Form listing applicant's date of residence as July 1, 1981;
- A copy of a Admission record dated September 14, 1981;
- A copy of a Registration Card dated September 14, 1981;
- A copy of a 1981/1982 Certificate of Eligibility;
- Copies of school records for 1982 – 1983, 1983 – 1984, and 1984 – 1985;
- Copies of school pictures for 1981 – 1982, 1982 – 1983, 1983 – 1984, 1984 – 1985, and 1985 – 1986;
- A copy of Newhall School 1984 Grade 6 class picture;
- Copies of school certificates dated 1984, 1985-1986, and 1986;
- Copies of yearbook pictures for 1984-1985, 1985-1986, and 1987;
- A copy of a Comprehensive Tests of Basic Skills (CTBS) Report dated June 23, 1986;
- A copy of a California Academic Guidance Report dated September 4, 1986;
- A copy of a 1986-1987 identification card;
- An employment letter from stating that the applicant worked from June 23, 1986 to December 31, 1986;
- Copies of 1986 paystubs and a 1986 Internal Revenue Service (IRS) Form W-2 from Inc.;
- A letter from the Law Office of addressed to the applicant and dated December 17, 1986; and,
- Affidavits from

On December 11, 2006, the director issued a denial notice. In the denial, the director concluded that the applicant had failed to submit all of the evidence requested in her RFE. The director noted that the applicant had failed to submit school transcripts from for 1981 to 1986 and an immunization record. Thus, the director indicated that the application was abandoned. On February 22, 2007, the applicant filed a motion to reopen and submitted additional evidence. On March 5, 2007, the director dismissed the applicant's motion to reopen stating that the applicant failed to demonstrate that the director had denied the application in error and that the applicant had failed to fully comply with the director's RFE.

On appeal, the applicant submits evidence already in the record of proceeding.

The contemporaneous documents submitted by the applicant appear to be credible. The declarations and other documentation submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses. Upon review of the totality of the record, although the AAO has some doubt as to the truth, the record contains sufficient relevant probative, and credible evidence that leads the AAO to believe that the claim is "probably true" or "more likely than not." Thus 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).

The information on the supporting documents in the record is consistent with the applicant's testimony and with the claims made on his I-687 Application; there are no significant inconsistencies. As stated in *Matter of E-M-,* 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.