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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**

[REDACTED]

L<sub>1</sub>

DATE: OCT 26 2011

Office: BALTIMORE

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:

[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:** On June 27, 2005, the applicant filed an 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, or *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). The director, the Director, Chicago, Illinois, denied the application noting that the applicant failed to appear for a scheduled interview. The applicant appealed. The AAO withdrew the decision on this basis and remanded the matter to the director for further action and consideration. The director, Chicago, Illinois reopened the matter for purposes of entering a new decision and, upon doing so, issued a new decision, finding the applicant had failed to establish his continuous residence in the United States throughout the requisite period.

The regulation at 8 C.F.R. § 245a.2(r) specifies that when a case is certified to the AAO, an applicant shall be given notice of such certification and afforded the opportunity to submit a brief within 30 days from the service of the notice. The director failed to inform the applicant of this in his decision, however, on pursuant to 8 C.F.R. 103.4(a), the case was certified for review to the AAO and the applicant was afforded 30 days from the date of the notice to submit a brief and/or additional evidence for consideration in response to the director's newly issued decision.

The applicant submitted a timely response to the Notice of Certification (NOC) and the case is now before the AAO on appeal. The appeal will be dismissed.

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).

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.

In support of his claim of continuous unlawful residence in the United States, the applicant has submitted the following:

- Written statements from [REDACTED]

[REDACTED] Although the affiants state that they met the applicant during the relevant period, their statements do not supply enough details to be considered probative. Specifically, all of the affiants indicate that they met the applicant during the relevant period, however, none indicate how they date their initial acquaintance with him, how frequently they saw him during the relevant period or where the applicant resided during the relevant period. Some of the affiants do not provide the dates of their acquaintance with the applicant, noting that they have known you for “a while.”

- A letter dated February 8, 2010 signed by [REDACTED] indicated that the applicant was under his care beginning in February 15, 1982. [REDACTED] fails to provide any other details or evidence to support his assertions and he does not note how he dates his relationship with the applicant or whether his office records were referenced. In response to the NOID, the applicant submitted copies of handwritten notes from the doctor dated in 1982 and 1983. These are unverifiable and not probative.

- A letter from San Jose City College dated April 12, 1982 indicating that the college was corresponding with the applicant's father and his friend regarding the applicant's potential enrollment. The letter was sent to the applicant's father's address in Pakistan and does not affirm his residence in the United States. Rather, it seems to indicate that the applicant was in Pakistan and seeking to come to the United States to enroll. In response to the NOID, the applicant submitted an affidavit from [REDACTED] indicating that [REDACTED] (the applicant's father's friend) contacted the school to inquire about his potential enrollment and that the applicant was already in the United States at that time. He submits no evidence to support his assertions.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the *entire* requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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