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[Redacted]

Date: **JAN 17 2013**

Office: HOUSTON

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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The application for temporary resident status, filed 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 initially approved by the Houston Field Office Director. Approximately six years after approving the application, the director terminated the applicant's temporary resident status. The appeal will be sustained.

The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. Specifically, the director found that the evidence of continuous residence was insufficient and inconsistent.

On appeal, counsel for the applicant submits a brief and additional evidence including an updated list of phone numbers of the affiants.

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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.* 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.

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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 (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 has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

On May 10, 2005, the applicant filed the instant Form I-687 application. The record includes evidence of residence in the form of copies of Texas Identification cards issued in 1985 and 1988 plus numerous affidavits and declarations. The director failed to mention the identification cards in the decision.

In a notice of intent to terminate temporary resident status (NOIT), the director informed the applicant that sworn statements should be sworn to. The director appeared to give no weight to unsworn statements. Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit as evidence of residence, the list also permits the submission of any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant is not limited to any one type of evidence. In the NOIT, the director found an inconsistency in the statement of [REDACTED] who wrote that he met the applicant while they were working together at [REDACTED] Company in 1977. The director noted that the applicant had failed to list this employer on his Form I-687. Twenty-eight years lapsed between the time of employment and when the applicant prepared and submitted his Form I-687 application. One minor discrepancy does not undermine the credibility of all the evidence in the record in this case. Finally, the director critiqued the statements by saying that the statements’ authors had failed to provide documentary evidence in support of their assertions. There is no regulatory requirement that witnesses provide documentary evidence in support of their statements.

In a notice of decision to terminate the applicant’s temporary resident status, the director said that the Service had contacted two affiants or declarants and determined that what they said on the phone and what they wrote was inconsistent. However, the record does not contain a contemporaneous record of the phone discussions, so the record does not support the director’s findings.

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.

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The appeal will be sustained and the applicant shall be restored to temporary resident status. The director shall reopen and adjudicate the applicant's application for adjustment from temporary to permanent resident status.

ORDER: The appeal is sustained.