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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  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: FEB 27 2010

MSC 05 217 11142

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.

*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, New York. 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period. Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the merits and found that the applicant had not established continuous residence in the United States for the requisite period. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

On appeal, counsel states that the applicant has proved his claim by the preponderance of evidence. Counsel states that the evidence provided to the United States Citizenship and Immigration Services (USCIS) is credible and in accordance with the law and that the USCIS abused its discretionary powers by not reviewing the evidence and stating why the documents lack the factual basis to support the applicant's claim. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on January 7, 2010. (NRC2009056478). No further brief or evidence has been received into the record. The AAO will consider all evidence on appeal and make a *de novo* decision based on the record of proceedings.<sup>1</sup>

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

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<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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).

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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

documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits and statements of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The applicant claimed in his notarized statement dated November 22, 2005, on his class determination form and during his Form I-687 interview that he first entered the United States without inspection on July 14, 1980.

The applicant submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] and [REDACTED] state that they have known the applicant since July, 1980, and 1981, respectively, but do not state the circumstances surrounding their meeting the applicant. [REDACTED] also claimed that the applicant worked for him from 1983 to 1988 but does not explain where and in what capacity they worked together. [REDACTED] claimed that he worked with the applicant during the period of 1982 through 1988 but does not state where they worked together, the positions held and any other circumstances regarding their work history. [REDACTED] and [REDACTED] also attest to the applicant's absence from the United States and the applicant's attempt to apply for legalization during the requisite period. [REDACTED] claims that he first met the applicant in a restaurant where he worked as a kitchen helper. However, the applicant never claimed on his Form I-687 applications to be employed as a kitchen helper at a restaurant.

The affidavits all contain statements that the witnesses either have personally known or been acquainted with the applicant or know that the applicant resided in the United States since the 1980's. The witnesses attest to the applicant's good moral character, being friends and socializing with the applicant but provide no other information about the applicant.

The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witness supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies, and shared activities. The affidavits fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted associations with him, 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. Therefore, the affidavits will be given nominal weight.

The letter signed by [REDACTED] states that the applicant was employed as a part-time construction helper from December, 1985 to August, 1989. The letter signed by [REDACTED], Brooklyn, New York, states that he has known the applicant since 1981 and that the applicant has been working as a part-time construction helper from August, 1988 to December, 1990. However, the applicant claimed on his initial and current Form I-687 applications to be self-employed doing odd jobs from September, 1980 to present and does not claim to have worked for either company. The employers attest to the applicant's good moral character but provide no other information about the applicant or any evidence to verify the applicant's employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, and the applicant never claimed employment with either company, they will be given minimal weight.

The letter signed by [REDACTED], New York, states that the applicant entered the United States before January 1, 1982 and been residing continuously in an unlawful manner except for a short absence for which reason his legalization application was denied by the USCIS during the requisite period. [REDACTED] claims to have personal knowledge of this matter but does not provide any information on how he acquired such knowledge. The letter signed by [REDACTED] secretary for [REDACTED] states that the applicant is known to [REDACTED] and members of the committee of the mosque since 1981. The letters do not give the dates of the applicant's membership in the organization and are not probative of his residence in the United States during the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters from the [REDACTED], and the [REDACTED] do not contain most of the aforementioned requirements. Moreover, the applicant does not claim to be a member of either organization on his Form I-687 applications. The evidence will be given minimal weight.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of

the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the inconsistencies noted call into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

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 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.

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