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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC-05-278-10194

Office: LOS ANGELES

Date: **NOV 28 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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 District Director, Los Angeles. 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, on July 5, 2005. The director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite periods. Specifically, the director mentioned that the applicant had made oral and written statements under oath that he departed the United States in 1982 and returned in 1985.

On appeal, the applicant stated that he left the United States in late [REDACTED] and returned early in [REDACTED]. He also attached medical documentation and stated that the reason he stayed so long in the Philippines was due to his father's medical condition and that he needed to be in his father's presence during the time that his father was recuperating.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 and 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.* 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 (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 resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on July 5, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following Los Angeles, California addresses during the requisite period: [REDACTED] from September 1981 to December 1982 and [REDACTED] from January 1985 to December 1989. At part #32 where applicants were asked to list absences from the United States since entry, the only absence the applicant listed during the requisite period was a trip to the Philippines from January 1983 to December 1984.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident, the applicant provided affidavits from three individuals, together with unsigned written statements regarding the relationship between the applicant and each of these individuals. In his affidavit, [REDACTED] stated that he was a childhood friend of the applicant. During the requisite period, he confirmed the applicant's residence in the United States only from July 1981 to December 1982 at [REDACTED]. This is inconsistent with the information provided by the applicant on Form I-687, which indicates the

applicant did not moved to [REDACTED] until September 1981. This inconsistency calls into question whether [REDACTED] can actually confirm the applicant resided in the United States during the requisite period.

In his affidavit, [REDACTED] stated that he met the applicant in 1981 and helped him find an apartment. The affiant confirmed the applicant resided at [REDACTED] from September 1981 to December 1982 and at [REDACTED] from January 1985 to December 1989.

In his affidavit [REDACTED] stated that the applicant was a family friend from the Philippines and stayed with the affiant for some time. The affiant confirmed the applicant resided at [REDACTED] from September 1981 to December 1982 and at [REDACTED] from January 1985 to December 1989.

The record indicates the applicant was interviewed by an immigration officer on May 8, 2006. At the interview, the applicant completed a sworn written statement. He stated that he left the United States at the end of 1982 and returned in 1985. This statement is inconsistent with the information provided on Form I-687, which indicates the applicant departed the United States in January 1983 and returned in December 1984. This inconsistency casts doubt on the applicant's statements regarding the timing and duration of his trip to the Philippines.

In denying the application, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite periods. Specifically, the director mentioned that the applicant had made oral and written statements under oath that he departed the United States in 1982 and returned in 1985.

On appeal, the applicant provided medical documentation and his own written statement. The applicant stated that he left the United States in late 1982 and returned early in 1985. The applicant appeared to indicate he had erred on Form I-687 when he stated that he had been outside the United States from January 1983 to December 1984 instead of from late 1982 until early 1985. The applicant also stated that the reason he stayed so long in the Philippines was due to his father's medical condition and that he needed to be in his father's presence during the time that his father was recuperating. The medical documentation is in the form of a letter dated May 22, 2006, provided by [REDACTED], Administrative Officer of Philippine General Hospital. The letter states that [REDACTED], who is identified on the applicant's Form I-687 as the applicant's father, was admitted to Philippine General Hospital on January 18, 1983 and diagnosed with malignant bone cancer. He was discharged November 6, 1984. No copies of contemporaneous medical records were attached, and the letter fails to explain the origin of the information it provides.

According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's absence to the Philippines from approximately January 1983 to December 1985 exceeded 45 days. The applicant

failed to establish that emergent reasons prevented him from accomplishing his return to the United States within the time period allowed. Specifically, the evidence provided by the applicant, including his written statement on appeal, tend to indicate the applicant was aware of his father's health condition prior to departing the United States and the state of his father's health was the applicant's reason for departing the United States. The applicant made inconsistent statements regarding the date of his departure from the United States and failed to provide evidence regarding the date he discovered the seriousness of his father's condition. Therefore, the applicant has failed to establish that his father's medical condition changed when the applicant was outside of the United States, thus presenting the emergent reason for his delay in returning to the United States. The applicant has failed to establish that emergent reasons delayed his return to the United States. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In summary, the applicant has provided evidence from himself and affiants that indicates he was absent from the United States for more than two years. The applicant has failed to establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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 amenability to verification. Given the applicant's admission that he departed the United States for a visit exceeding 45 days, and given his failure to establish that emergent reasons prevented him from accomplishing his return within the allowed time period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.