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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 06 073 13922

Office: CHICAGO

Date:

**AUG 15 2008**

IN RE: Applicant:

APPLICATION:

Application for Temporary Resident Status under 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 National Benefits Center. If your appeal was sustained, or if the matter 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.

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, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the application will be remanded for further consideration.

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 December 12, 2005. The applicant was interviewed on September 14, 2006. On September 22, 2006, the director observed that during the course of the applicant's interview on September 14, 2006, the applicant testified that he had departed the United States in February 1990 and did not return to the United States until January 1994. The director determined that the applicant's single absence from the United States exceeded 45 days and thus the applicant was not eligible for status as a temporary resident. The director denied the application on this basis.

On appeal, the applicant asserts that denying his application for an absence occurring from February 1990 to January 1994 does not make any sense as the amnesty period was in 1987 and 1988. The applicant contends that his absence from February 1990 to January 1994 is not relevant to the eligibility requirements of this application.

The AAO agrees. The applicant correctly observes that 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) and that he or she has been continuously physically present in the United States since November 6, 1986 with the regulatory clarification that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. See Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3) and 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant (or his parent or spouse) attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The AAO finds that the director improperly considered the applicant's absence from the United States after the date the applicant (or his parent) attempted to file a completed Form I-687 application as the applicant noted on the CSS/Newman Class Membership Worksheet. An applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency for the "statutory period from January 1, 1982 until May 4, 1988;" but rather from January 1, 1982 through the date the applicant attempted to file a Form I-687 application or was caused not to timely file. Thus, the director's September 22, 2006

decision is in error and is withdrawn. Although the director's decision will be withdrawn, the applicant in this matter has not established eligibility for this benefit.

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 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, 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.*

Even if the director has some doubt as to the truth, if the applicant 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.

In this matter, the applicant has not submitted sufficient credible, probative evidence that he entered the United States before January 1, 1982 and resided in the United States through the date the applicant (or his parent or spouse) attempted to file a completed Form I-687 application and fee or was caused not to timely file. As the merits of the application have not been addressed, the matter will be remanded for a determination on the issue of the applicant's entry into the United States prior to January 1, 1982 through the date the applicant attempted to file a completed Form I-687.

The absence of sufficiently detailed documentation to establish the applicant's claim of continuous residence for the requisite period precludes the AAO from approving 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. The applicant has failed to meet his burden of proof and 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*. However, as the director did not directly address this issue in the decision, the applicant did not have notice of the deficiencies in the matter in order to adequately address the issue on appeal.

The director's September 22, 2006 decision will be withdrawn and the matter remanded for further action and consideration pursuant to the above. If the director's decision is adverse to the applicant, the matter will be certified to the AAO for review.

**ORDER:** The director's September 22, 2006 decision is withdrawn and the matter is remanded for further action and consideration pursuant to the above. If the director's decision is adverse to the applicant, the matter will be certified to the AAO for review.